19 47. **File No.** B Agrl. Debt. Relief /47

Legal **DEPARTMENT**

B **BRANCH**

Subject:— P 91F

A Bill to consolidate and amend the law for the Relief of Agricultural Debtors in the Province of Bombay

L. A. Bill No XIV of 1947

Bombay Act. No XXVIII of 1947:

(Pt I & II combined)

File No. B Agrl. Debtors Relief /47

Std. Sectt. Slip 24 B a.

S 70-B

C O N T E N T S.

Legal Department File No. B. Agri. Debtors Relief/47. Pt. I & II

S.No.	Compilation No.	Subject	Pages.
		A Bill to consolidate and amend the Law for the Relief of Agriculturel Debtors in the Province of Bombay.	
1.	U.O. to R.D.No. 799 dated.21st Jan. 1947.	Draft Bill	1 - 2
2.	U.O. to R.D.No. 1311, dated 8th Feb. 1947.	Recasting of the Bill	3 - 4.
3.	U.O. to R.D. No. 1664 dtd.18th. Feb. 1947.	Governor's sanction	5 - 8
4.	U.O.to R.D.No. 2167 dtd.5th. March 1947.	Recasting of clause 19(1)	9 -10
5.	U.O. to R.D.No. 2852 dtd.24th. March 1947.	Extending the provisions of the Act to soldiers ---- necessity of a separate ... provision for	11-12
6.	G.L.L.D.No. 4289 dtd.28th. April 1947.	Seeking Governor's assent	13-16
7.	L.D.R.I.No. 5493 dtd.3rd. May 1947.	Repugnancy of the Bill	17-18.
8.	L.D.R.I. No. 6425 dtd.22th. 28th.May 1947.	Governor General's assent.	19-20
9.	G.R.L.D.No.1442 dtd. 12th.Feb.47.	Publication of the Bill	21-76. 22-76 not typed
10.	G.R.L.D.No.5465 dt.27th.May 1947.	Publication of the Act.	77-104 79-182 not typed
11.		Debate	105-192.

5-Cs.
H.V.V.
10/5.

14/5
14/5

Office of the R. L. A.

The subject-matter of the Bombay Agricultural Debtors Relief Bill falls under entries 1,2,21,27,32,33 and 37 in List II, and entries 2,4,8,10,12 and 16 in List III, in the Seventh Schedule to the Government of India Act, 1935.

2. The Bill requires the previous sanction of the Governor under section 299(3) of the said Act. It does not require any recommendation or affect any of the special responsibilities of the Governor under section 52(1) of the said Act.

3. The provisions of clause 10 declaring certain settlements to be void and the provisions of clauses 22,23,30,31 and 33 for the scaling down of debts and settlement thereof are repugnant to the Indian Contract Act, 1872, section 10.

Clause 42 which bars pleaders' appearance is repugnant to the Legal Practitioners Act, 1879, section 8.

Chapter III contains provisions regarding insolvency proceedings in respect of debtors under the Act. These provisions would be repugnant to the Provincial Insolvency Act, 1920, Parts II and VI.

The Bill is therefore repugnant to the provisions of the Indian Contract Act, 1872, the Legal Practitioners Act, 1879, and the Provincial Insolvency Act, 1920, which are existing Indian laws relating to matters falling in entries 10,16,and 12 in List III in the Seventh Schedule to the Government of India Act, 1935. It will therefore be necessary to reserve the Bill for the consideration of the Governor General with reference to section 107(2) of the Government of India Act, 1935.

4. The Federal Court in its judgment in the Bank of Commerce, Ltd. Khulna [illegible] vs. Kunj Bihari Kar, etc. (1944, Federal Law Journal at page 269) has held that the provisions of the Bengal Money Lenders Act, 1940, in so far as they relate to claims on promissory notes are ultra vires the Provincial Legislature. An appeal against the decision is pending in the Privy Council. Pending decision of the P.C.,

P.T.O.

the Federal Court Ruling is binding on the Province. The Bill in so far as it relates to claims on promissory notes, would therefore be ultra vires.

It is ~~thme~~ therefore for consideration of the administrative department, whether the Bill may be proceeded with pending the result of the Privy Council appeal.

Sd/- D.V.Vyas.

Remembrancer of Legal Affairs.

U.R. to R.D. No.759, dated the 21st. January 1947.

4-Cs.
M.V.V.
10/5.

Office of the R.L.A.

The proof as corrected is returned herewith.

2. Paragraph 3 of Revenue Department note at page 315.- The view taken by Revenue Department is not correct. Governor's previous sanction under section 299(3) of the Government of India Act, 1935 is necessary and should be obtained.

3. Paragraph 4 at page 315.- It is not the sanction of the Governor-General that is to be obtained. But the Bill when it is passed will be reserved for the consideration of the Governor General and will be submitted for his assent through Revenue Department and the Governor's Secretary.

4. Paragraph 5 (1) at page 315.- The words "except the City of Bombay" have been added to clause 1(2) of the Bill.

5. Paragraph 5(2) at page 316.- I do not quite follow the margin note of Secretary, Revenue Department, on page 316. If the present Act has been ~~extended~~ extended to Kalol Taluka in the Panch Mahals District with effect from 16th October 1946, the six months' period for making applications under the existing section 17 will expire on 15th April 1947. If the Bill is enacted into law before then, it will be necessary to make some provision in clause 4(1) with reference to Kalol Taluka. However, for the present clause 4(1) might stand as it is. If necessary, a short amendment may be moved later on.

6. Paragraph 5(3) at page 316:- The judgments of the High Court have been examined and a redraft of clause 19(1) has been substituted.

7. Deputy Secretary, Revenue Department's marginal note at 'B' on page 316 is not correct. It will be necessary to recast the last sentence in paragraph 1 of the Statement of Objects and Reasons. This has been done.

Sd/-D.V.Vyas.
Remembrancer of Legal Affairs.

U.R. to R.D. No.1311, dated the 8th February 1947.

4-Cs.
U.V.V.
10/5.

Legal Department.

The Bill to consolidate and amend the law for the Relief of Agricultural Debtors in the Province of Bombay, having been published in the Bombay Government Gazette, dated the 12th February 1947, these papers are returned to the Revenue Department for further necessary action and for submitting them to H.M. (Finance, Co-operative and Village Industries) for his use at the time of introducing the Bill. The notice has been given to the Secretary to the Bombay Legislative Assembly by this Department. The Revenue Department is requested to obtain the previous sanction of the Governor under section 299(3) of the Government of India Act, 1935, in the appended form. The Revenue Department is requested to obtain orders of Government regarding the application of the proposed Act to the partially excluded areas.

Sd/- L.K.J.Pathare.

Personal Assistant to the Remembrancer of Legal Affairs.

U.R. to H.D. No.1664 dated the 18th February 1947.

4-Cs.

U.V.V.
10/5.

GOVERNMENT HOUSE.

Bombay, February 1947.

I accord sanction under section 299(3) of the Government of India Act, 1935, to the Bombay Agricultural Debtors Relief Bill, 1947.

GOVERNOR OF BOMBAY.

4-Ca.

B.V.V.
10/3.

Office of the R.L.A.

'A' of Revenue Department note at page 72.- The point made by the High Court will be sufficiently met by the redraft of clause 19(1) of the Bombay Agricultural Debtors Relief Bill 1947, since published as L.A. Bill No.XIV of 1947.

2. With regard to the second point, I agree with Secretary, Revenue Department, that appeals are not covered.

Sd/- D.V.Vyas.

Remembrancer of Legal Affairs.

U.O.R. to R.D.No.2167, dated the 5th. March 1947.

A-Ce.
M.V.V.
10/3.

Office of the R.L.A.

It is true that under the proposed Bill all applications will now lie to Courts and not to Boards. But sub-clause (1) of clause 4 of the Bill provides that any debtor ordinarily residing in any local area for which a Board was established under section 4 of the Bombay Agricultural Debtors Relief Act, 1939, on or after 1-2-1947, or his creditor may make an application before 1-2-1947 to the Court for the dis adjustment of his debts. Residence in an area for which a Board was established would thus appear to be the criterion for making an application for the adjustment of debts. It is also true that section 11 of the Indian Soldiers (Litigation) Act, 1925 (IV of 1925) provides that in computing the period of limitation prescribed by the Indian Limitation Act, 1908, or any other law for the time being in force for any suit, appeal or application to any Court, any party to which is or has been an Indian Soldier, the time during which the soldier has been serving under war conditions since 4th. August 1914 or under any special conditions since 1st April 1925 shall be excluded. This section only provides for computing limitation period. It does not prescribe a right to apply for adjustment of debts.

2. If it is considered necessary to extend protection to soldiers a specific provision in the Bombay Agricultural Debtors Relief Bill would be necessary.

3. The view taken by Deputy Secretary, Revenue Department, in his note at p.71 ante is not correct.

Sd/- D.V. Vyas.

Remembrancer of Legal Affairs.

U.R. to R.D. No.2852 dated the 24th March 1947.

4-Cs.

H.V.V.
10/5.

No.4259.
Legal Department,
Bombay Castle, 29th. April 1947.

From

P.M.Lad,Esquire, I.C.S.,
Secretary to the Government of Bombay.

To,

The Secretary to the Governor of Bombay.

Subject:- A Bill to consolidate and amend the law for the Relief of Agricultural Debtors in the Province of Bombay.

Sir,

With reference to section 75 of the Government of India Act, 1935, I am directed to forward herewith for being presented to His Excellency the Governor, an authentic copy of a Bill to consolidate and amend the law for the Relief of Agricultural Debtors in the Province of Bombay, which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council held on the 9th and 11th April 1947 respectively.

2. None of the provisions of the Bill affects any special responsibility of the Governor under section 52 (1) of the Government of India,Act, 1935, or falls within the purview of clause (a),(b),(c) and or (d) of paragraph XVII of the Instrument of Instructions ~~ed~~ to the Governor of Bombay.

3. The subject-matter of the Bill falls under entries 1,2,21,27, 32,33 and 37 in List II, and entries 2,4,8,10,12 and 18 in List III, in the Seventh Schedule to the Government of India Act, 1935.

4. The provisions of clause 10 declaring ~~xxxxxx~~ certain settlements to be void and the provisions of clauses 22,30,31 and 33 for the scaling down of debts and settlement thereof are repugnant to the provisions of section 10 of the Indian Contract Act, 1872.

Clause 40 imposing ban on alienation of property is repugnant to the provisions of the Transfer of Property Act, 1882.

Clause 42 which bars pleader's appearance is repugnant to the provisions of section 8 of the Legal Practitioners Act,1879.

4-Cs.
M.V.V./10.5

Clauses 43 and 45 are repugnant to the provisions of the Code of Civil Procedure, 1908.

Chapter III contains provisions regarding insolvency proceedings in respect of Debtors under the Act. These provisions would be repugnant to the provisions of Parts II and VI of the provincial Insolvency Act, 1920.

Clause 52 is repugnant to the provisions of the Indian Limitation Act, 1908.

The Bill is therefore repugnant to the provisions of the Indian Contract Act, 1872, the Transfer of Property Act, 1882, the Legal Practitioners Act, 1879, the Code of Civil Procedure, 1908 the Provincial Insolvency Act, 1920, and the Indian Limitation Act, 1908, which are existing Indian laws relating to entries 10,8,16,4 and 12 in the Concurrent Legislative List in the Seventh Schedule to the Government of India Act, 1935. It will therefore be necessary to reserve the Bill for the consideration of the Governor General with reference to section 107(2) of the Government of India Act,1935.

5. I am also to forward herewith six copies of each of the items

1. Bill as introduced in the Bombay Legislative Assembly with the Statement of Objects and Reasons.	Nos.1 to 4 and two copies of item No.5 of the papers noted in the margin.
2. Report of the Select Committee together with the Bill as amended by the Select Committee.	
3. Bill as read for the third time and passed by the Bombay Legislative Assembly and as introduced in the Bombay Legislative Council.	
4. Bill as read for the third time and passed by the Bombay Legislative Council.	
5. Extracts from the proceedings of Bombay Legislative Assembly dated the 10th March,4th,8th and 9th April 1947 and of the Bombay Legislative Council dated the 11th April, 1947.	

I have the honour to be,
Sir,
Your most obedient servant,

Sd/- P.H.Ind./28.4.47.
Secretary to Government,

Through the Secretary to the Government of Bombay,
Revenue Department.

No. GS.1500.
Office of the Governor's Secretary,
Government House.

From,

D.Symington, Esquire, CIE.ICS.
Secretary to the Governor of Bombay.

To,

The Secretary to the Bombay Legislative Assembly Council,
Bombay.

Bombay, 3rd May 1947.

Subject:- The Bombay Agricultural Debtors Relief Bill, 1947.

Sir,

With reference to the above Bill, which was read for the third time and passed at the sittings of the Bombay Legislative Assembly and the Bombay Legislative Council on the 9th and 11th April 1947 respectively, I am directed to state, for the information of the Hon'ble the Speaker / President that as the Bill is repugnant to the provisions of the Indian Contract Act, 1872, the Transfer of Property Act, 1882, the Legal Practitioners Act, 1879, the Code of Civil Procedure, 1908, the Provincial Insolvency Act, 1920, and ~~the Civil Procedure, 1908, the Provincial~~ the Indian Limitation Act, 1908, which are existing Indian laws relating to entries 10, 8, 16, 4 and 12 in the Concurrent Legislative List in the Seventh Schedule to the Government of India Act, 1935, it will be necessary to reserve the Bill for the consideration of His Excellency the Governor-General with reference to section 107(2) of the Government of India Act, 1935. His Excellency the Governor is accordingly pleased, under section 75 of the said Act, to declare that he reserves the Bill for the consideration of the Governor-General.

Your obedient servant,

Sd/- D.Symington,

Secretary to the Governor of Bombay.

No.GS.1500.
Bombay 3rd May 1947.

Copy forwarded with compliments to:-

The Secretary to Government, Legal Department, with reference to his letter No.4289, dated the 28th April 1947.

The Secretary to Government, Revenue Department, with reference to his endorsement No.1166-B/45, dated the 29th April 1947.

By order of the Governor of Bombay,

Sd/-

Secretary to the Governor of Bombay.

L-Cs.
M.V.V./11.5

No.C.S.1847.
Office of the Governor's Secretary,
Government House,
Bombay, 29th May 1947.

From

D.Symington, Esquire, C.I.E. I.C.S.,
Secretary to the Governor of Bombay.

To,

The Secretary to Government,
Legal Department.

Subject:- The Bombay Agricultural Debtors Relief Bill, 1947.

Sir,

With reference to the correspondence resting with this Office letter No.C.S. 1784, dated the 24th May 1947, I am directed to forward herewith the authentic copy of the Bombay Agricultural Debtors Relief Bill, 1947, with His Excellency the Governor-General's assent signified thereon.

Your obedient servant,

Sd/-

For Secretary to the Governor of Bombay.

4-Co.
H.V.V.
11/5.

Bills.
A Bill to consolidate and amend the law for the Relief of Agricultural Debtors in the Province of Bombay.

GOVERNMENT OF BOMBAY,
Legal Department.
Resolution No.1442.

Bombay Castle, 12th February 1947.

Memorandum from the Revenue Department dated the 12th February 1947 Transferring for necessary action, the papers relating to a Bill to consolidate and amend the law for the Relief of Agricultural Debtors in the Province of Bombay.

RESOLUTION:- The Bill with the Statement of Objects and Reasons should be forwarded to the Manger, Government Central Press, Bombay, for publication in the Bombay Government Gazette, dated the 12th February 1947, as Bill No.XIV of 1947.

2. The Bill and the Statement of Objects and Reasons should be translate into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette on the 15th February 1947.

3. The dates of the various publications should be reported to the Secretary to the Bombay Legislative Assembly.

By order of the Governor of Bombay,

Sd/- K.M.Chitnvis,

Assistant Remembrancer of Legal Affairs.

To,

The Manager, Government Central Press, Bombay
(with the Bill and the Statement of Objects and Reasons and with a request that 230 Gazette copies of the Bill and the Statement of Objects and Reasons may be forwarded to the Secretary to the Bombay Legislative Assembly for distribution to the Members of the Bombay Legislative Assembly and 25 copies for the use of the Legal Department.),
The Revenue Department,
The Oriental Translator to Government,
The Secretary to the Bombay Legislative Assembly,
The Director of Publicity, Bombay.
} With a copy of the Bill and the Statement of Objects and Reasons.

* With four extra copies of the Bill.

4-Co.
M.V.V.
11/3.

Subject:- Publication of the Bombay Agricultural Debtors Relief Act,1947.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No.5465.

Bombay Castle, 27th May 1947.

Letter to the Secretary to the Governor, No.4289, dated the 28th April 1947.

Letter from the Secretary to the Governor, No.C.S.1784 dated the 24th May 1947:

"With reference to the correspondence resting with my endorsement No.C.S.1500, dated the 3rd May 1947, I am directed to inform you that intimation has been received from the Secretary to the Governor-General (Public) that His Excellency the Governor-General has assented to the Bombay Agricultural Debtors Relief Bill, 1947, on the 22nd May 1947".

RESOLUTION:- The law should be published as Bombay Act No.XXVIII of 1947 in the Bombay Government Gazette, dated the 27th May 1947.

2. The Act should be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Revenue Department with reference to the memorandum from that Department dated the 12th February 1947.

By order of the Governor of Bombay,

Sd/-

P.H.LAD.

Secretary to Government.

To,

The Manager, Government Central Press, Bombay (with a copy of the Act and with a request that 30 Gazette copies of the Act may be forwarded to the Legal Department),

The Revenue Department,
* The Oriental Translator to Government,
The Secretary to the Bombay Legislative Assembly,
The Secretary to the Bombay Legislative Council,
The Director of Publicity, Bombay.

} With a copy of the Act.

* With five extra copies of the Act.

4-Co.
C.V.V.
11/5.

L. A. BILL No. XIV OF 1947.

(*A Bill to consolidate and amend the law for the Relief of Agricultural Debtors in the Province of Bombay.*)

REPORT OF THE SELECT COMMITTEE.

We, the members* of the Select Committee appointed to consider L. A. Bill No. XIV of 1947 (A Bill to consolidate and amend the law for the Relief of Agricultural Debtors in the Province of Bombay) have the honour to report as follows:—

We have carefully considered the Bill and have made some changes therein. The reasons for the principal changes are given below:—

Clause 2, sub-clause (*3*).—For the words "actually and voluntarily" we have substituted the word "ordinarily".

Clause 2, sub-clause (*5*) (*a*), *paragraph* (*ii*).—We have amended this paragraph with a view to provide that a person who has held any land used for agricultural purposes at any time since 30th January 1910 which has been transferred and which transfer is in the nature of a mortgage although not purporting to be so, shall be considered to be a debtor within the meaning of the term "debtor" as defined in clause 2 (*5*). The scope of the definition of the term "debtor" is thus being extended.

Clause 2, sub-clause (*5*) (*a*), *paragraph* (*iii*).—For the words "two cultivating seasons" we have substituted the words "cultivating seasons in the two years".

*The signatures of Mr. R. B. Girme, Mr. A. A. Kittur and Mr. K. B. Kazi will be notified when received.

MO-1 Bk IIb 4—1

We have amended this paragraph with a view to provide that a person who has been cultivating land personally for the cultivating seasons in the two years immediately preceding the date of the establishment of the Board concerned under the Bombay Agricultural Debtors Relief Act, 1939, will also be a debtor within the meaning of the term "debtor" as defined in clause 2 (*5*). The scope of the definition of the term "debtor" is thus being extended.

Clause 2, sub-clause (*5*) (*a*) (*iv*).—We have deleted the word "ordinarily". We think that for a person to be a debtor within the meaning of clause 2 (*5*) his annual income from sources other than agriculture and manual labour should not exceed 33 per cent. of his total annual income or should not exceed Rs. 300 whichever is greater. We have accordingly amended paragraph (*iv*).

Clause 2, sub-clause (*5*) (*b*), *paragraphs* (*ii*) *and* (*iii*).—These paragraphs have been amended on the lines of paragraphs (*ii*) and (*iii*) of sub-clause (*5*) (*a*).

Clause 2, sub-clause (*5*) (*b*), *paragraph* (*iv*).—We have deleted the word "ordinarily" and raised the limit of aggregate incomes from Rs. 1,000 to Rs. 1,500.

Clause 4, sub-clause (*2*).—For the words "and verified" we have substituted the words "verified and presented".

Clause 7.—For the portion beginning with "if such debt" and ending with "who created it", we have substituted the words "by any person who is not himself a debtor".

Clause 9.—We have added the words "or the Court in appeal" after the word "Court" wherever it occurs in this clause in order to make the clause applicable to settlements arrived at during the pendency of proceedings before an appellate Court also.

Clauses 11, 17, 18 and 20.—We have deleted the words "claimed as being" from clauses 11, 17 and 20 as being unnecessary and carried out consequential amendment in clause "18".

Clause 19.—This clause provides for the transfer of pending suits, applications for execution and proceedings to the Court under certain circumstances. We think that pending appeals but not revisional proceedings should also be so transferred under similar circumstances. We have accordingly amended this clause.

Clauses 22 and 23.—We have amalgamated these clauses and recast them.

Clause 25 (*1*) [*New clause 24* (*1*)].—After sub-clause (*1*) we have added a new sub-clause (*2*) enabling an agricultural labourer to make an application to the Court before 1st August 1947 that any transfer of land by him or any other person through whom he inherited it was a transfer in the nature of a mortgage and to get the necessary declaration from the Court. When the Court makes such declaration the applicant shall be a debtor for the purposes of the proposed Act and the Court shall proceed with the application as if it was made under clause 4.

Clause 25 (*2*) (*new clause 24*).—We have renumbered this sub-clause as clause 25 and have substituted the word and figure "section 24" for the words "this section".

Clause 26, sub-clauses (*1*) *and* (*3*).—We think that the statement showing the total amount of debt due by a debtor to Government or a Local Authority or a Co-operative Society or a Scheduled Bank, etc., should be furnished to the Court within such time as may be fixed by the Court in that behalf. We do not think that the time for the submission of such statement should be prescribed by rules. We have accordingly amended these sub-clauses.

Clause 26, sub-clause (5).—We have given discretion to the Court to decide when debts, such as Tagavi Loans, need not be extinguished because the statement of debt was not furnished.

Clause 31, sub-clause (1).—We have amended this sub-clause with a view to removing ambiguity. Consequential changes have been made in sub-clauses (2), (3) and (4).

Clause 33, sub-clause (4).—We think that the Bank should recover the amount due to it from a debtor in annual instalments and the rate of interest to be charged should not be fixed by the Court, but should be notified by the Provincial Government from time to time. This will ensure uniformity in the rates of interest. We have accordingly amended this sub-clause.

Clause 42.—We think that except in proceedings involving sale mortgage questions under old clause 25 (new clause 24) or questions involving property rights, such as fraudulent alienations of property or incumbrances thereon under clause 28, pleaders should not be allowed ordinarily to appear on behalf of any party in any proceeding before the Court or the Appellate Court. We have accordingly amended this clause.

Clause 43, sub-clause (1).—We have deleted the word "from" before the words "an award" to correct a clerical mistake.

Clause 43, sub-clause (2).—All appeals shall lie to the Court of the District Judge. We have accordingly amended this clause.

Clause 43, sub-clause (4).—It is not proposed to take away the right of going in revision. Sub-clause (4) has accordingly been deleted.

Clause 44, sub-clause (1), paragraphs (ii) and (iv).—We think the reasonable and equitable court-fee payable in such cases would be Re. 1 for every hundred rupees, or part thereof, of the amount of the award, subject to a maximum of Rs. 50. We have accordingly amended these paragraphs.

Clause 44, sub-clause (2).—We have amended this sub-clause with a view to provide for making rules prescribing the manner of the recovery of court-fees.

Clause 55, sub-clause (2) (f).—In view of the amendment of sub-clauses (1) and (3) of clause 26, this paragraph is unnecessary and is, therefore, deleted.

Clause 55, sub-clause (2), new paragraphs (j).—This has been added in view of the amendment of sub-clause (2) of clause 44.

Clause 56.—We have deleted sub-clause (1) as the Bombay Small Holders Relief Act, 1938, has already expired on 31st March 1947. We have added two provisos at the end to provide for disposal of appeals under the repealed Act.

(Signed) VAIKUNTH L. MEHTA.
(,,) MORARJI R. DESAI.
(,,) D. N. DESAI.
(,,) G. V. JOSHI.
(,,) K. R. GARUD.
(,,) B. D. LALA.
(,,) C. A. VYAS.
(,,) L. B. BHINGARDEVE.
(,,) S. R. KANTHI.
(,,) K. B. DUNDUR.
(,,) S. R. RANE.
,,) AHMED A. PATEL.

Note.—**Deletions made by the Select Committee are shown in square brackets and additions are shown in italics.**

L. A. BILL No. XIV OF 1947.

A Bill to consolidate and amend the law for the Relief of Agricultural Debtors in the Province of Bombay.

(As amended by the Select Committee.)

WHEREAS it is expedient to consolidate and amend the law for the relief of agricultural debtors in the Province of Bombay and for certain other purposes specified herein ; It is hereby enacted as follows :—

CHAPTER I.

Preliminary.

1. (*1*) This Act may be called the Bombay Agricultural Debtors Relief Act, 1947. Short title and extent.

(*2*) It extends to the whole of the Province of Bombay except the City of Bombay.

2. In this Act, unless there is anything repugnant in the subject or context— Definitions.

(*1*) " award " means an award made under sub-section (*4*) of section 8 or section 9, 32 or 33 or as confirmed or modified by the Court in appeal ;

(*2*) " co-operative society " means a society registered under the provisions of the Bombay Co-operative Societies Act, 1925 ;

Bom. VII of 1925.

(*3*) " Court " means the court of the Civil Judge (Senior Division) having ordinary jurisdiction in the area where the debtor [actually and voluntarily] *ordinarily* resides and if there is no such Civil Judge, the court of the Civil Judge (Junior Division) having such jurisdiction ;

(*4*) " debt " means any liability in cash or kind, whether secured or unsecured, due from a debtor whether payable under a decree or order of any civil court or otherwise but does not include arrears of wages payable in respect of agricultural or manual labour ;

(*5*) " debtor " means—

(*a*) an individual—

(*i*) who is indebted ;

(*ii*) who holds land used for agricultural purposes *or has held such land at any time not more than 30 years before the 30th January 1940, which has been transferred whether under an instrument or not and which transfer is in the nature of a mortgage although not purporting to be so*;

(*iii*) who has been cultivating land personally for the [two cultivating seasons] *cultivating seasons in the two years* immediately preceding the date of the coming into operation of this Act *or of the establishment of the Board concerned under the repealed Act*; and

(*iv*) whose annual income from sources other than agriculture and manual labour does not [ordinarily] exceed [20] *33* per cent. of his total annual income *or does not exceed Rs. 300, whichever is greater*;

(*b*) an undivided Hindu family—

(*i*) which is indebted;

(*ii*) which holds land used for agricultural purposes *or has held such land at any time not more than 30 years before the 30th January 1940, which land has been transferred whether under an instrument or not and which transfer is in the nature of a mortgage although not purporting to be so*;

(*iii*) which has been cultivating land personally for the [two cultivating seasons] *cultivating seasons in the two years* immediately proceeding the date of the coming into operation of this Act *or of the establishment of the Board concerned under the repealed Act*; and

(*iv*) the annual income of which from sources other than agriculture and manual labour does not [ordinarily] exceed 40 per cent. of its total annual income and the aggregate of such incomes of the members of which does not exceed [Rs. 1,000] *1,500*.

Explanation.—For the purposes of this clause "agriculture" includes horticulture, the raising of crops or garden produce, dairy farming, poultry farming, stock breeding and grazing, but does not include leasing of land or cutting only of wood;

(*6*) "financing of crops" means advancing of loans as defined in the repealed Act;

(7) "holder" means a holder as defined in clause (11) of section 3 of the Bombay Land Revenue Code, 1879, and includes a holder of land held for the performance of service useful to Government or village community, which service is actually being performed but does not include a holder of any land held on behalf of a religious or charitable institution; and the expression "to hold land" shall be construed accordingly; Bom. V of 1879

(*8*) "prescribed" means prescribed by rules;

Bom. XXVIII of 1939. (*9*) "repealed Act" means the Bombay Agricultural Debtors Relief Act, 1939;

Bom. VII of 1925. (*10*) "resource society" shall have the same meaning as it has in the Bombay Co-operative Societies Act, 1925;

(*11*) "rules" means rules made under section 55;

II of 1934. (*12*) "scheduled bank" means a bank included in the Second Schedule to the Reserve Bank of India Act, 1934;

(*13*) "seasonal finance" means advancing of loans for such purposes as may be prescribed, such loans being repayable on or before the 15th May following;

(*14*) "to cultivate personally" means to cultivate by one's own labour or by the labour of any member of one's family or by servants or hired labour under one's personal supervision or the personal supervision of any member of one's family.

Explanation I.—If a person who was cultivating personally dies leaving as his heir a widow or a minor or a person who is subject to physical or mental disability, such heir shall be deemed to cultivate the land personally notwithstanding the fact that the land is cultivated on behalf of such heir by servants or hired labour or by tenants.

Explanantion II.—In the case of an undivided Hindu family, the land shall be deemed to have been cultivated personally if it is cultivated by any member of such family. If there are no adult male co-parceners in such family capable of cultivating the land personally, such family shall be deemed to be cultivating the land personally if the land is cultivated on behalf of such family by servants or hired labour or by tenants;

V of 1908. Bom. of 1879. (*15*) words and expressions used in this Act, but not defined, have the meanings assigned to them in the Code of Civil Procedure, 1908, or the Bombay Land Revenue Code, 1879, as the case may be.

Savings. **3.** Save as otherwise expressly provided, nothing in this Act shall affect the debts and liabilities of a debtor falling under the following heads, namely:—

(*i*) any revenue or tax payable to Government or any other sum due to it by way of loan or otherwise,

(*ii*) any tax payable to a local authority or any other sum payable to such authority by way of loan or otherwise,

(*iii*) any sum due to a co-operative society,

(*iv*) any sum advanced solely for the purpose of financing of crops as provided in the repealed Act or for the purpose of seasonal finance as provided in this Act,

(*v*) any sum due under a decree or order for maintenance passed by a competent Court, and

(*vi*) any sum due to a scheduled bank.

CHAPTER II.

Procedure for adjustment of debts.

Application for adjustment of debts.

4. (*1*) Any debtor ordinarily residing in any local area for which a Board was established under section 4 of the repealed Act on or after the 1st February 1947, or his creditor may make an application before the 1st August 1947 to the Court for the adjustment of his debts.

(*2*) Every application made under sub-section (*1*) shall be in writing in the prescribed form and shall be signed [and verified], *verified and presented* in the prescribed manner.

(*3*) Notwithstanding anything contained in section 3 an application made under this section shall contain the amounts and particulars of all debts specified in that section due by the debtor.

Every creditor and debtor to file a true and correct statement before Court.

5. (*1*) Notwithstanding the fact that no application has been filed under section 4—

(*a*) every creditor, on being required to do so by notice in writing by any of his debtors, shall, within two months from the date of the receipt of such notice, file before the Court a true and correct statement of all his claims against such debtor, and shall at the same time send a copy thereof to such debtor, and

(*b*) every debtor, on being required to do so by notice in writing by any of his creditors, shall, within two months from the date of the receipt of such notice, file before the Court a true and correct statement—

(*i*) of all the debts owed by such debtor;

(*ii*) whether he holds any land used for agricultural purposes and whether he has been cultivating land personally;

(*iii*) of his income from agriculture and from sources other than agriculture in the year preceding the date of the notice.

The debtor shall at the same time send a copy of such statement to such creditor.

525

(2) Every debtor or creditor giving a notice under sub-section (1) shall at the same time send a copy thereof to the Court.

(3) In awarding the costs of any proceeding in respect of any application made under section 4 the Court may, on being satisfied that the statement required to be filed under sub-section (1) was, without sufficient cause, not filed within the time specified therein or incorrectly filed, direct the party in default to bear the whole or any portion of the costs of such proceeding.

Application by debtor jointly and severally liable.

6. (1) If the payment of a debt due by a debtor is guaranteed by a surety or if a debtor is otherwise jointly and severally liable for any debt along with any other person and if the surety or such other person is not a debtor, the debtor may make an application under section 4 for relief in respect of such debt and the Court may after consideration of the facts and circumstances of the case proceed with the adjustment of debts under this Act in so far as such applicant is concerned.

(2) Whenever the debts due by a debtor which are guaranteed by a surety are adjusted under sub-section (1), the surety shall be discharged from liability in respect of the debts or portion of the debts of such debtor which are extinguished under sub-section (1) of section 15, sub-section (3) of section 17, sub-section (5) of section 26, section 34 or sub-section (2) of section 35; and the surety shall not be entitled to proceed against the debtor in respect of such debts or portion.

Assignees from non-debtor not entitled to benefit of this Act.

7. No application shall lie under section 4 for adjustment of any debt due from a debtor to whom such debt has been transferred or assigned after the 1st January 1938 [if such debt was not originally incurred by the debtor himself or in the case of a mortgage or charge by the person who created it] *by any person who is not himself a debtor.*

Application for recording settlement.

8. (1) If any debtor and any or all of his creditors arrive at a settlement in respect of any debt due by the debtor to the creditor, the debtor or any of the creditors may, within thirty days from the date of such settlement, make an application to the Court for recording such settlement.

(2) Every such application shall be in the prescribed form, and shall be signed and verified in the prescribed manner.

(3) On receipt of such application the Court shall, after giving notice to the creditor or the debtor, as the case may be, and after making such enquiry as it thinks fit, if it is satisfied that the settlement arrived at is *bona fide* and voluntary and is not made with intent

to defeat or delay any of the creditors of the debtor, and is in the interest of the debtor, and that the debtor is a person who fulfils the conditions referred to in clauses (*a*) and (*b*) of sub-section (*1*) of section 17, record such settlement and certify the same. Every such settlement so recorded and certified shall be binding upon the parties thereto and shall not, save as otherwise hereinafter provided, be re-opened.

(*4*) After the Court has recorded and certified a settlement under sub-section (*3*), the Court shall call upon the debtor to make a declaration whether there are any other debts due by the debtor which are not included in the settlement. If the debtor makes a declaration that there are no such debts, the Court shall make an award in terms of such settlement.

(*5*) If the Court is satisfied, after recording such settlement, that there are other debts due from the debtor which are not included in the settlement, the Court shall treat the application made under sub-section (*1*) as an application for adjustment of debts under section 4.

Settlement during pendency of proceedings before Court.

9. Notwithstanding anything contained in the preceding sections, if during the pendency of proceedings before the Court *or the Court in appeal, as the case may be*, a settlement is arrived at between a debtor and all his creditors and if [the] *such* Court is satisfied that the settlement has been made by the debtor voluntarily and is for his benefit, [the] *such* Court may make an award in terms of such settlement,

Certain settlements to be void.

10. Every settlement of a debt due from a debtor to any creditor, which is not certified by the Court under section 8, or in terms of which no award has been made under section 9, shall be void and shall not be recognised by any Court for any purpose whatsoever.

Application under section 4 or 8 to be made only in respect of debtor whose debts are not more than Rs. 15,000.

11. No application under section 4 or 8 shall be entertained by the Court on behalf of or in respect of any debtor, unless the total amount of debts [claimed as being] due from him on the date of the application is not more than Rs. 15,000.

Withdrawal of applications.

12. An application for adjustment of debts under section 4 or an application for recording a settlement under section 8 shall not be withdrawn without the leave of the Court.

Consolidation of applications.

13. Where two or more applications for adjustment of debts under section 4 are presented by or against the same debtor, all such applications shall be consolidated. Where such separate applications are presented against joint debtors, all such applications shall be heard together.

527

Service of notice on debtors and creditors to submit statement of debts.

14. On receipt of an application for adjustment of debts, the Court shall—

(*a*) give notice to the debtor (unless the debtor is himself an applicant) and to every creditor (other than the creditor who is himself an applicant) whose name and address are given in the application, and

(*b*) publish a general notice,

requiring the debtor and all creditors to submit a statement in the prescribed form within one month from the date of the service of the notice or the publication of the general notice, whichever is later :

Provided that if the Court is satisfied that the debtor or any creditor is for good and sufficient cause unable to comply with the notice within the time specified therein it may extend the period for the submission of the statement.

Debts in respect of which no application for adjustment or settlement is made to be void.

15. (*1*) Every debt due from a debtor in respect of which no application has been made under section 4 within the period specified in the said section 4 or in respect of which no application for recording a settlement is made under section 8 within the period specified in the said section 8 or in respect of which an application made to the Court is withdrawn under section 12 and no fresh application is made under section 4 and every debt due from such debtor in respect of which a statement is not submitted to the Court by the creditor in compliance with the provisions of section 14 shall be extinguished.

(*2*) Nothing in this section shall apply to any debt due from any person who has by his declaration, act or omission intentionally caused or permitted his creditor to believe that he is not a debtor for the purposes of this Act or that no application under section 4 can be entertained in respect of any debt owed by such person to such creditor by reason of the provisions of section 11.

Duties of debtors and creditors.

16. (*1*) Every debtor by or against whom an application is made under section 4 or who is a party to an application made under section 8 shall produce all books of accounts and shall give such inventories of his property and such lists of his creditors and debtors and of the debts due from and to him, submit to such examination in respect of his property or his creditors, attend at such time before the Court, and generally do all such things as may be required by the Court or as may be prescribed.

(*2*) It shall be the duty of every creditor to produce such books of accounts, to submit to such examination and to supply such information in respect of the debt due to him by the debtor and the securities held by him, as may be required by the Court or as may be prescribed.

Preliminary issues.

17. (*1*) On the date fixed for the hearing of an application made under section 4, the Court shall decide the following points as preliminary issues :—

(*a*) whether the person for the adjustment of whose debts the application has been made is a debtor ;

(*b*) whether the total amount of debts [claimed as being] due from such person on the date of the application exceeds Rs. 15,000.

(*2*) If the Court finds that such person is not a debtor or that the total amount of debts [claimed as being] due from such person on the date of the application is more than Rs. 15,000, the Court shall dismiss the application forthwith :

Provided that before the application is so dismissed the creditors or any of them may remit any specific portion of their claim so as to reduce the total amount of the debts of all the creditors [claimed as being] due from such person on the date of the application to a sum not exceeding Rs. 15,000. In such case the Court shall not dismiss the application but shall proceed further with the same.

(*3*) The portion of the debts in respect of which the claim is remitted under sub-section (*2*) shall be extinguished.

Court-fee to be refunded to creditor.

18. If an application made by a creditor under section 4 is dismissed under section 17 on the ground that the total amount of the debts [claimed from a debtor as being due] *due from a debtor* on the date of the application is more than Rs. 15,000, the Court shall direct the amount of the court-fee paid by the creditor making the application to be refunded to the creditor.

Transfer of pending suits, *appeals*, applications and proceedings to the Court.

19. (*1*) All suits, *appeals*, applications for execution and proceedings *other than revisional* in respect of any debt pending in any civil or revenue court shall, if they involve the questions whether the person from whom such debt is due is a debtor and whether the total amount of debts due from him on the date of the application exceeds Rs. 15,000 be transferred to the Court.

(*2*) When an application for adjustment of debts made to a Court under section 4 or a statement submitted to a Court under section 14 includes a debt in respect of which a suit, *appeal*, application for execution or proceeding *other than revisional* is pending before [another] a civil or revenue court, the Court shall give notice thereof to such other court. On receipt of such notice, such other court shall transfer the suit, *appeal*, application or proceeding, as the case may be, to the Court.

(*3*) When any suit, *appeal*, application or proceeding is transferred to the Court under sub-section (*1*) or sub-section (*2*), the Court shall proceed as if an application under section 4 had been made to it.

529

(*4*) If the Court, to which any suit, *appeal*, application or proceeding is transferred under sub-section (*1*) or sub-section (*2*), decides the preliminary issue mentioned in clause (*a*) of sub-section (*1*) of section 17 in the negative [and] *or* that mentioned in clause (*b*) of the said sub-section (*1*) in the affirmative, it shall retransfer the suit, *appeal*, application or proceeding to the court from which it had been transferred to itself after the disposal and subject to the result of the appeal where an appeal is filed, and after the expiry of the period prescribed for an appeal where no appeal is filed.

(*5*) When any suit, *appeal*, application or proceeding is retransferred to the court under sub-section (*4*), the said court shall proceed with the same.

Taking of accounts.

20. If the Court finds the person making an application under section 4 or the person against whom an application is made under the said section 4 to be a person—

(*a*) who is a debtor, and

(*b*) the total amount of debts [claimed as being] due from whom on the date of the application is not more than Rs. 15,000,

the Court shall proceed to take accounts in the manner hereinafter provided.

Examination of creditor and debtor.

21. In an application for the adjustment of debts if the amount of the creditor's claim is disputed, the Court shall, when taking accounts, examine both the creditor and the debtor as witnesses, unless for reasons to be recorded the Court deems it unnecessary so to do.

Court to inquire into history and merits.

[**22.** The Court shall inquire into the history and merits of the case from the commencement of the transactions between the parties and the persons (if any) through whom they claim, out of which the claim has arisen :

Provided that where the debtor has transferred any of his property which is subject to a charge in respect of any of his debts, no inquiry into the history and merits of the case shall be made prior to the date of such transfer :

Provided further that where transactions between the parties have commenced more than 20 years before the 30th January 1940 any settlement of accounts which has been last arrived at between the parties before the said period of 20 years and which is in writing and bears the signature of the debtor or the person through whom the liability is derived shall be accepted as binding between the parties and no inquiry into the history and merits of the case shall be made prior to the date of such settlement.]

Mode of taking accounts.

[23]*22.* Notwithstanding any agreement between the parties or the persons (if any) through whom they claim, as to allowing compound interest or setting off the profits of mortgaged property without an account in lieu of interest, or otherwise determining the manner of taking the account, and notwithstanding any statement or settlement of account, or any contract purporting to close previous dealings and create a new obligation, the Court shall, [subject to the provisions of section 22, open and take the account between the parties from the commencement of the transactions] *inquire into the history and merits of the case and take account between the parties from the commencement of the transactions subsisting between the parties and the persons (if any) through whom they claim, out of which the claim has arisen* and determine the amount due to each of the creditors at the date of the application made under section 4, according to the following rules, namely :—

(*1*) (*a*) Separate accounts of principal and interest shall be taken ;

(*b*) In the account of principal there shall be debited to the debtor only such money as may from time to time have been actually received by him or on his account from the creditor, and the price of goods, if any, sold to him by the creditor ;

(*c*) In the account of interest there shall be debited to the debtor simple interest on the balance of principal outstanding from time to time, in the case of transactions which commenced on or after the 1st January 1931 at a rate not exceeding 9 per cent. per annum or at the rate agreed upon between the parties or at the rate allowed under any decree passed between the parties, whichever is the lowest ;

(*d*) In the accounts of principal and interest there shall also be debited the amounts, if any, respectively due for principal (including costs) and interest under any decree or order passed by a competent court in respect of any debt :

Provided that if such decree or order does not specify the amount of principal and interest separately or does not contain any material for determining the same, two-thirds and one-third of the amount awarded by such decree or order shall, for purposes of this clause, be deemed to be the amount awarded on account of principal (including costs) and interest, respectively.

(*2*) In the case of transactions which commenced before the 1st January 1931 the Court shall first take the account up to the said date and in the account of interest there shall be debited to the debtor, simple interest on the balance of principal for the time being outstanding at the rate

531

agreed upon between the parties or at the rate allowed under any decree passed between the parties, whichever is lower or if in the opinion of the Court neither of the said rates is reasonable at such reasonable rate not exceeding 12 per cent. per annum as the Court may determine. The amount found due on the 1st January 1931 in respect of principal as well as in respect of interest shall, each separately, be reduced [in the case of transactions which had commenced on or after the 1st January 1931 by 30 per cent. and in the case of other transactions] by 40 per cent. notwithstanding that a decree or order of a civil court was passed in respect of any such amount or portion thereof. The amounts so reduced shall be taken to represent the amounts due in respect of principal and interest on the 1st January 1931. Separate accounts shall thereafter be taken of the principal and interest up to the date of the institution of the application.

(3) *In the case of transactions which commenced on or after the 1st January 1931 but before the 1st January 1940 in the account of interest there shall be debited to the debtor, simple interest on the balance of principal for the time being outstanding at the rate agreed upon between the parties, or at the rate allowed under any decree passed between the parties, or at the rate of 9 per cent. per annum, whichever is the lowest. The amount found due on the 1st January 1940 in respect of principal as well as interest shall each separately be reduced by 30 per cent. notwithstanding that a decree or order of a civil court was passed in respect of any such amount or portion thereof. The amounts so reduced shall be taken to represent the amounts due in respect of principal and interest on the 1st January 1940. Separate accounts shall thereafter be taken of the principal and interest up to the date of the institution of the application.*

(4) *In the case of transactions which commenced on or after the 1st January 1940, in the account of interest there shall be debited to the debtor simple interest on the balance of principal for the time being outstanding at the rate agreed upon between the parties, or at the rate allowed under any decree passed between the parties, or at the rate of 6 per cent. per annum, whichever is the lowest. Separate accounts shall be taken of the principal and interest up to the date of the institution of the application.*

(5) [(3)] All money paid by or on account of the debtor to the creditor or on his account and all profits, service or other advantages of every description received by the creditor in the course of the transactions (estimated, if necessary, at such money-value as the Court in its discretion may determine) shall be credited first in the account of interest, and when any payment is more than sufficient to discharge the balance of interest due at the rate specified in rule (2), the residue of such payment shall be credited to the debtor in the account of principal.

(6) [(4)] The accounts of principal and interest shall be made up to the date of the institution of the application, and the aggregate of the balance, if any, appearing due on both such accounts against the debtor on that date shall be deemed to be the amount due at that date, except when the balance appearing due on the interest-account exceeds that appearing due on the principal-account, in which case, double the latter balance shall be deemed to be the amount then due.

Provided that where transactions between the parties have commenced more than 30 years before the 30th January 1940 any settlement of accounts which has been last arrived at between the parties before the said period of 30 years and which is in writing and bears the signature of the debtor or the person through whom the liability is derived shall be accepted as binding between the parties and no inquiry into the history and merits of the case shall be made prior to the date of such settlement.

In certain cases rent may be charged in lieu of profits.

[24] *23.* Where any mortgaged property is in the possession of the mortgagee or his tenants other than the mortgagor and the Court is unable to determine what profits have actually been received, it may fix a fair rent for such property and charge to the mortgagee such rent as profits for the purpose of section [23] *22*:

Provided that, if it be proved that in any year there was any suspension or remission of rent or land revenue of such land under section 84A of the Bombay Land Revenue Code, 1879, an abatement of the whole or part of such amount may be allowed for the year.

Bom. V of 1879.

Power of Court to declare transfer purporting to be sale to be in nature of mortgage.

[25] *24.* (*1*) Notwithstanding anything to the contrary contained in any law, custom, or contract, whenever it is alleged during the course of the hearing of an application made under section 4 that any transfer of land by a person whose debts are being adjusted under this Act or any other person through whom he inherited it was a transfer in the nature of a mortgage, the Court shall declare the transfer to be a mortgage, if the Court is satisfied that the circumstances connected with that transfer showed it to be in the nature of a mortgage.

(2) *Any agricultural labourer may make an application before the 1st August 1947 to the Court that any transfer of land by him or any other person through whom he inherited it was a transfer in the nature of a mortgage. On hearing the application, the Court shall, notwithstanding anything to the contrary contained in any law, custom, or contract, declare the transfer to be a mortgage, if it is satisfied that the circumstances connected with the transfer showed it to be in the nature of a mortgage. When the Court makes any such declaration, the applicant shall, notwithstanding anything contained in the definition of "debtor" in sub-section (5) of section 2, be deemed to be a debtor for the purposes of this Act and the Court shall proceed as if an application under section 4 had been made to it.*

533

25. [(*2*)] Nothing in [this section] *section 24* shall apply to— *Provisions of section 24 not to apply to certain transfers and transferees.*

(*i*) any transfer which has been adjudged to be a transfer other than a mortgage by a decree of a court of competent jurisdiction or by a Board established under section 4 of the repealed Act; and

(*ii*) any *bona fide* transferee for value without notice of the real nature of such transfer or his representative where such transferee or representative holds under a registered deed executed on or before the 15th day of February 1939.

26. (*1*) On receipt of an application for adjustment of debts, the Court shall give notice to the Collector requiring him to state to the Court within [the time prescribed] *such time as may be fixed by it* the amount of the debt due by the debtor to Government. Notice to Collector, co-operative societies, Registrar, local authorities and others.

(*2*) The Court shall also give similar notice to any local authority, co-operative society or scheduled bank to which any debt may be due by the debtor and also to any person who is entitled to maintenance from the debtor, under a decree or order passed by a competent Court. In the case of any debt due to a co-operative society, the Court shall also give notice to the Registrar of Co-operative Societies or to such officer as the Registrar may nominate in this behalf.

(*3*) On receipt of such notice the Collector, the local authority, the co-operative society or the scheduled bank, or the person entitled to maintenance, as the case may be, shall, within [the prescribed time] *such time as may be fixed by the Court, from time to time* submit a statement to the Court showing the total amount of the debt due by the debtor as also any recurring liability against such debtor in respect of the liability for maintenance under the decree or order.

(*4*) The Collector, the co-operative society and the scheduled bank shall also furnish a statement to the Court showing the amount of remission which the Provincial Government, the co-operative society or the scheduled bank, as the case may be, is willing to give in respect of the debt.

(*5*) [Any debt or portion thereof in respect of which no statement is submitted under sub-section (*3*) and the portion of any debt remitted under sub-section (*4*) shall be extinguished.] *The portion of any debt remitted under sub-section (4), and unless the Court otherwise directs any debt or portion thereof in respect of which no statement is submitted under sub-section (3), shall be extinguished.*

Court's duty to determine particulars, value, etc., of property.

27. After taking accounts under section [23] *22* the Court shall in the manner hereinafter provided determine—

(*1*) the particulars of the property belonging to the debtor,

(*2*) the value of the said property,

(*3*) the particulars of any incumbrances on the said property, and

(*4*) the paying capacity of the debtor.

Fraudulent alienations or incumbrances void.

28. (*1*) If in the course of the hearing of an application made under section 4, the Court finds that the debtor has made an alienation of property or created any incumbrance thereon with intent to defeat or delay any of his creditors, the Court shall, by notice, summon the debtor and the person in whose favour the alienation or incumbrance is made or created to appear before it on a day to be specified in the notice.

(*2*) On the day specified in the notice or such other day to which the hearing may be adjourned the Court shall hear the parties and if it is satisfied that the alienation was made or the incumbrance was created with intent to defeat or delay any of the creditors of the debtor, the Court shall declare the alienation or incumbrance to be void.

(*3*) Nothing in this section shall impair the rights of an alienee or the holder of an incumbrance in good faith and for valuable consideration.

Value of property of debtor to be determined by Court in prescribed manner.

29. (*1*) Subject to the provisions of sub-sections (*2*), (*3*) and (*4*), the value of the property and other assets of a debtor for the purposes of ascertaining the paying capacity of the debtor under section 27 shall be determined by the Court in the prescribed manner.

(*2*) The property or assets which are exempt from attachment in execution of a decree of a civil court under the Code of Civil Procedure, 1908, shall not be taken into account. V of 1908.

(*3*) The amount of the debts mentioned in section 3 shall be deducted.

(*4*) The market value of the lands, which under any law for the time being in force, are not transferable or alienable except with the previous sanction of the Collector or the Provincial Government, shall be calculated in such manner as may be prescribed.

Paying capacity.

30. The paying capacity of the debtor shall, for the purposes of this Act, be deemed to be sixty per cent. of the value of all the property of the debtor:

Provided that when any portion of such property yields income but the market value of such portion cannot be determined, the value of such portion shall be the amount of the income capitalized at six per cent. per annum.

535

Debts payable by debtors to be scaled down.

31. (*1*) Notwithstanding any law, custom, contract, *award* or decree of a court to the contrary [all debts payable by] *the amounts found due under section 22 from* a debtor [on the date of the application made under section 4] shall be *further* scaled down in the manner hereinafter provided.

(*2*) If all the debts *found* due by a debtor *after taking accounts under section 22*, are unsecured, such debts [as are found due on taking accounts under this Act] shall be *further* scaled down *pro rata* to the paying capacity of the debtor.

(*3*) If all the debts *found* due by a debtor *after taking accounts under section 22*, are secured debts, and the total amount of such debts [found due, on taking accounts under this Act,] is more than sixty per cent. of the value of the property belonging to the debtor, such debts shall be *further* scaled down *pro rata* to the paying capacity of the debtor.

(*4*) If the debts *found* due by a debtor *after taking accounts under section 22* are both secured and unsecured, and if the total amount of the secured debts [found due on taking accounts under this Act] is more than sixty per cent. of the value of the property on which such debts are secured, the secured debts shall be *further* scaled down *pro rata* to sixty per cent. of the value of the property on which such debts are secured and the unsecured debts shall be *further* scaled down *pro rata* to sixty per cent. of the value of the other property belonging to the debtor over which no debts are secured.

Award.

32. (*1*) After determining the amount of debts scaled down in the manner provided in section 31 the Court shall, save as otherwise provided in section 33, make an award.

(*2*) The award shall be in the prescribed form and shall be drawn up subject to the following provisions :—

(*i*) the amount of the secured debts scaled down shall be charged on the properties on which they may have been secured ;

(*ii*) subject to clause (*i*) the amount of unsecured debts shall be charged on all the properties of the debtor ;

(*iii*) in fixing the priority in which debts shall be paid the following order shall be followed :—

(*a*) debts due to Government, which are charged on the immoveable property belonging to the debtor or which are recoverable as the current year's land revenue,

(*b*) debts due to local authorities, which are charged on the immoveable property belonging to the debtor or which are recoverable as the current year's dues,

(*c*) loans given by resource societies or by persons authorised to advance loans under section 78 of the repealed Act or section 54 of this Act for the financing of crops under the repealed Act or for seasonal finance under this Act after the 30th January 1940 and other loans given for financing crops after the 1st January 1939 and before the 30th January 1940,

(*d*) secured debts in order of priority,

(*e*) debts due to Government, local authorities and other bodies including co-operative societies, and recoverable as arrears of land revenue,

(*f*) other debts due to co-operative societies,

(*g*) unsecured debts:

Provided that in the case of unsecured debts they shall be paid *pro rata*;

(*iv*) the total annual instalments shall not exceed twelve:

Provided that in fixing the amount of instalments in which the debts shall be paid the Court shall ascertain the net annual income of the debtor and the annual instalments payable by the debtor shall not exceed his net annual income.

Explanation.—For the purposes of this clause, the net annual income of the debtor shall mean the balance of his annual income after deducting (*i*) such sum as may be considered necessary for the payment of the liability, if any, imposed on the debtor under a decree or order for maintenance passed by a competent Court, (*ii*) such sum as may be considered necessary for the maintenance of the debtor and his dependants, and (*iii*) the sum required by the debtor to pay the assessment and taxes in respect of the current year to Government and to local authorities and to pay off loans borrowed for the purpose of the financing of crops under the repealed Act or seasonal finance under this Act;

(*v*) the Court may pass an order for the delivery of possession of any property notwithstanding any law or contract to the contrary;

(*vi*) the rate of interest shall not exceed 6 per cent. per annum or such less rate as may be notified in this behalf by the Provincial Government or the rate agreed upon between the parties when the debt was originally incurred or the rate allowed by the decree in respect of such debt, whichever is the lowest.

Court to prepare scheme for adjustment of debts through Provincial Land Mortgage Bank.

33. (*1*) Where the amount of debts of the debtor as scaled down under section 31 by it exceeds half the value of the debtor's immoveable property as determined by it, the Court shall intimate to the creditors the amount of the said debts of the debtor and the said value of the debtor's immoveable property and call upon them to state in writing within a specified period not exceeding one month whether they agree to the further scaling down of the said debts so as to reduce them to a sum not exceeding half the said value of the immoveable property of the debtor. If all the creditors agree to the further scaling down of the debts, the Court, shall make an order directing the debtor to pay the amount of such debts so agreed upon within a period of one month from the date of the order.

537

(2) Where the total amount of the debts or of the debts as scaled down by the Court under section 31 does not exceed half the value of the immoveable property of the debtor, the Court shall make an order directing the debtor to pay the amount of such debts within a period of one month from the date of the order.

(3) Unless the debtor pays the amount of such debts within a period of one month from the date of the order or such extended period not exceeding one month as the Court may allow and produces the creditors' receipt therefor, the Court shall make an award in the prescribed form directing that the Primary Land Mortgage Bank situated in the local area or if there is no such Primary Land Mortgage Bank in that local area, the Bombay Provincial Co-operative Land Mortgage Bank registered under the Bombay Co-operative Societies Act, 1925, shall pay the creditors in cash the debt as finally scaled down or, if the creditors so desire, in bonds issued by the Bombay Provincial Co-operative Land Mortgage Bank, such bonds being guaranteed by the Provincial Government, for such amount in full satisfaction of all the debts due to them from the debtor. The Court shall further direct that such amount shall be charged on all the immoveable property of the debtor.

Bom. VII of 1925.

(4) The Bank shall be entitled to recover the amount due to it from the debtor in such *annual* instalments and at such rate of interest not exceeding six per cent. per annum as the [Court determines.] *Provincial Government may notify in this behalf in the Official Gazette, from time to time.*

(5) All sums due under an award made in favour of the bank under this section shall be recoverable as arrears of land revenue.

No recovery of amount in excess of debts scaled down.

34. The amount of debts scaled down under section 31 or further scaled down under section 33 shall for the purposes of this Act be the amount due by the debtor in respect of the said debts and the portion of the debts in excess of this amount shall be extinguished.

Debts not to be scaled down in case of collusion.

35. If the Court making an award under section 32 is at any stage of the proceeding satisfied—

(1) that the debtor had in collusion with any creditor furnished in such proceeding incorrect information in respect of the debt due by him to such creditor with a view to defeat the lawful claims of any other creditor, the Court may refuse to scale down any of the debts of such debtor in the manner provided in section 31 and may make an award for the full amount of the debts due from such debtor;

(2) that any claim by a creditor in such proceeding had been put forward in collusion between the debtor and such creditor with a view to defeat the lawful claims of any other creditor, the Court shall order that the debt due by the debtor to such creditor shall be extinguished and such debt shall not be recoverable,

Ex parte proceedings if any party does not appear.

36. (*1*) Notwithstanding that the person for the adjustment of whose debts an application has been made under section 4 or any of his creditors does not appear on the date fixed for the hearing of the application or on any date to which it may be adjourned, the Court shall proceed *ex parte* to hear the application, decide the preliminary issues and, if necessary, make the award, on the evidence available.

(*2*) When an application made under section 4 is heard and disposed of *ex parte* under sub-section (*1*), the decision on the preliminary issues or the award shall not, except for sufficient reasons, be reopened merely on the ground that any of the parties thereto did not appear at the hearing.

Re-opening of award and re-adjustment of debts.

37. If, after an award is made under section 32, the Court finds on an application made to it by any party or otherwise, that the debtor has other property which was not disclosed to the Court when the award was made, or that any property included in the award did not belong to the debtor, the Court may, notwithstanding anything contained in this Act, reopen the award and readjust the debts in accordance with the provisions of this Act :

Provided that where the Court is satisfied that the non-disclosure of such property was in consequence of any fraud on the part of the debtor, the Court in revising the award shall not give the debtor the benefit of section 31.

Award to be registered : how executed.

38. (*1*) Every award made under this Act shall, on payment of the court-fee payable under section 44, be registered under the Indian Registration Act, 1908; after the expiry of the period provided for an appeal, if an appeal is allowed but no appeal is filed and after the disposal of the appeal, if an appeal is filed. XVI of 1908.

(*2*) The court-fee on the award shall be paid by the party ordered by the Court to bear the costs :

Provided that any creditor who is not ordered to bear the costs may pay such court-fee. Such creditor shall be entitled to recover the amount of court-fee paid by him from the debtor with the first instalment payable to him under the award :

Provided further that no court-fee shall be payable by a co-operative society.

(*3*) The award so registered shall be executed as follows :—

(*i*) If the debtor makes default in the payment of any instalment due under the award to any creditor such creditor may apply in the prescribed form to the Court for execution of the award.

(*ii*) If the Court on receipt of such application is satisfied that the debtor has made default in the payment of the instalment the Court shall transfer the award for execution to the Collector and thereupon the Collector shall recover the amount of the instalment from the debtor as arrears of land revenue ;

Provided that nothing in this sub-section shall affect the right of Government, a local authority or a co-operative society to have recourse to any mode of recovery allowable by any law for the time being in force.

Postponement of payment of instalment in case of remissions, etc.

39. (*1*) Whenever from any cause the payment of one-half or more of the land revenue payable to the Provincial Government is suspended or remitted the payment of the whole of the instalment due for that year and the full amount of the instalment due for each subsequent year under an award made under section 8, 9, 32 or 33 shall be postponed for one year.

(*2*) Whenever from any cause the payment of any portion less than one-half of the land revenue payable to the Provincial Government is suspended or remitted one-half of the amount of the instalment for that year and the full amount of the instalment due for each subsequent year under an award made under section 8, 9, 32 or 33 shall be postponed for one year.

No alienation by debtor before discharge of debts valid.

40. Notwithstanding any law or contract but subject to the provisions of section 41, no alienation of any property belonging to a debtor who is a party to any proceedings or award under this Act, made by him before all his debts are discharged shall be valid, except with the previous sanction of the Provincial Government.

Court may order sale of debtor's property in liquidation of his debt.

41. If the Court or the Court hearing an appeal against the award is at any time satisfied that it is in the interest of a debtor that any part of his property should be sold in liquidation of his debt or part thereof, such Court may permit the debtor to sell such part of the property for such purpose within a specified period. If the debtor fails so to sell it, such Court may order an officer of the Court to sell the same. The property ordered to be sold under this section shall be sold by such officer in the manner prescribed :

Provided that the part of the property ordered to be sold under this section shall not exceed the part liable to be sold under sub-section (*2*) of section 47.

Pleaders, etc., excluded from appearance.

42. Except in proceedings under [section 25] *sections 24 and 28* no pleader shall be entitled to appear on behalf of any party in any proceeding before the Court *or the Court in appeal* under this Act :

Provided that if the Court after examining the parties to any proceeding before it *or the Court in appeal* is of opinion that any of the parties is not sufficiently competent to represent his case and that in the interest of justice it is necessary to allow such party the assistance of any pleader, [the Court] *it* may allow the parties to be represented at their own cost by a pleader : [Pleader's fees shall not, however, be allowed as part of the costs.]

Provided further that pleader's fees shall not be allowed as part of the costs for the appearance of a pleader in any proceedings under this Act.

Appeals.

43. Notwithstanding anything contained in any other law and save as otherwise provided in section 51,

(*1*) an appeal shall lie—

(*i*) from every order passed under sub-section (*3*) of section 8 ;

(*ii*) from every order passed under section 17 ;

(*iii*) from every order passed under section *24* ;

(*iv*) from every order passed under section 28 ;

(*v*) from every award made under this Act other than an award made in terms of a settlement under sub-section (*4*) of section 8 or under section 9 or [from] an award made under section 33 before the making of which the creditors' agreement has been obtained under sub-section (*1*) thereof or an award before the making of which neither the debtor nor any of the creditors produced evidence to enable the Court to determine the amount of debt due from the debtor ;

(*2*) an appeal from the Court [of a Civil Judge (Junior Division) shall lie to the Court of the Civil Judge (Senior Division) in the District and an appeal from the Court of a Civil Judge (Senior Division)] shall lie to the Court of the District Judge ;

(*3*) no second appeal shall lie against any decision, order or award of the Court under this Act. [and]

[(*4*) no proceeding in revision shall lie against any such decision, order or award.]

Court-fees.

44. (*1*) Notwithstanding anything contained in the Court fees Act, 1870, court-fees payable in respect of proceedings under this Act shall be at the following rates :— VII of 1870.

(*i*) on an application under sub-section (*1*) of section 4 or of section 8 or on an award under sub-section (*4*) of section 8 or section 9—Re. 1 ;

(*ii*) on an award other than an award specified in clause (*i*)—[Rs. 15 ;] *Re. 1 for every hundred rupees, or part thereof, of the amount of the award, subject to a maximum of Rs. 50* ;

(*iii*) on an appeal against a decision of the Court under sub-section (*3*) of section 8 or sub-section (*2*) of section 17—Rs. 2 ;

(*iv*) on an appeal other than an appeal specified in clause (*iii*)—[Rs. 15.] *Re. 1 for every hundred rupees, or part thereof, of the amount of the award, subject to a maximum of Rs. 50.*

(*2*) Notwithstanding anything contained in any law, the court-fees payable in respect of proceedings under this Act shall be a first charge on the property of the party ordered to pay the costs *and shall be recoverable in such manner as may be prescribed.*

Notice how served.

45. Any notice required to be served under this Act shall be served in the manner provided in the Code of Civil Procedure, 1908 ; and when rules are made in that behalf in such manner as may be prescribed. V of 1908.

541

46. Save as otherwise expressly provided in this Act, the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings under this Chapter. Provisions of Civil Procedure Code to apply to proceedings.

V of 1908.

CHAPTER III.

Insolvency Proceedings.

47. (*1*) If at any stage of the proceedings under Chapter II the Court finds that the income of the debtor and his moveable property are not sufficient to allow his debts to be liquidated by annual instalments not exceeding twelve in number, the Court shall make an order adjudicating the debtor an insolvent. Court to declare debtor insolvent in certain circumstances.

(*2*) After the debtor has been adjudicated an insolvent by the Court, the Court shall direct that such portion of the property of the debtor liable to attachment and sale under section 60 of the Code of Civil Procedure, 1908, not exceeding one half as may be required to liquidate all the debts of the debtor, shall immediately be sold free of all incumbrances in liquidation of all the debts outstanding against such debtor:

V of 1908.

Provided that if after such portion of the property of the debtor is sold and all the debts of the debtor are not liquidated, the property remaining with the debtor exceeds 6 acres of irrigated land or 18 acres of dry land or any land assessed at Rs. 30, whichever is less, then such portion of the excess property over and above the aforesaid land as may be required to liquidate the remaining debts shall also be sold free of incumbrances.

48. The order of adjudication made under section 47 shall have the force of an order made by a competent Court in the exercise of its powers under section 27 of the Provincial Insolvency Act, 1920. Procedure in Insolvency proceedings.

V of 1920.

49. The proceeds realised by the sale of the property of the insolvent under section 47 shall be distributed in the order of priority specified in clause (*iii*) of sub-section (*2*) of section 32. Distribution of assets of insolvent.

50. No application or proceeding in regard to the insolvency of a debtor shall lie in or shall be dealt with by any other Court. Bar to application in insolvency in other Courts.

51. No appeal shall lie from any order passed under this Chapter except on the ground that the insolvent has failed to disclose all the material facts relating to his assets and liabilities. Appeals barred.

CHAPTER IV.

Miscellaneous.

52. In computing the period of limitation for the institution of any suit or proceeding in respect of any debt due from any person who is held not to be a debtor by the Court or the Court in appeal the period during which the proceedings were pendinng before the Court in respect of such debt shall be excluded. Period of proceeding before Courts under this Act to be excluded.

Alienation of standing crops etc., before repayment of loan prohibited.

53. (*1*) No person, who is a party to any proceedings or award under this Act and who is indebted to a resource society or any person authorised to advance loans under section 78 of the repealed Act or section 54 of this Act on account of any loan advanced to him for the financing of crops under the repealed Act or seasonal finance under this Act, shall hypothecate or sell the standing crops or the produce of his land without the previous permission of the society or of the person, as the case may be, until such loan has been repaid in full.

(*2*) Any person who hypothecates or sells the standing crop or the produce of his land in contravention of sub-section (*1*), shall, on conviction, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 500.

(*3*) No criminal Court shall take cognizance of any offence under this section except on the complaint in writing of the Court before which the proceedings were held or which made the award.

Power of Provincial Government to authorise any person to advance loans to debtors.

54. (*1*) The Provincial Government may by notification in the *Official Gazette* authorise in any local area any person to advance loans to debtors who are parties to any proceedings under this Act or in respect of whose debts an adjustment has been made under this Act.

(*2*) Such authority shall be granted on such conditions as may be prescribed.

Rules

55. (*1*) The Provincial Government may by notification in the *Official Gazette* and subject to the condition of previous publication from time to time, make rules for carrying into effect the purposes of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing provision, such rules may be made for all or any of the following purposes, namely :—

(*a*) the purposes for which loans may be advanced under clause (13) of section 2 ;

(*b*) the form of application under sub-section (*2*) of section 4 and the manner of signing [and verification], *verification and presentation* thereof ;

(*c*) the form of application and the manner of signing and verification thereof under sub-section (*2*) and the manner of giving notice under sub-section (*3*), of section 8 ;

(*d*) the manner of giving notice and publication of general notice and the form of statement to be submitted under section 14 ;

(*e*) the inventories of property, lists of creditors and of debtors and of debts due to and from a debtor, the examination in respect of property or creditors, the time at which the debtors shall attend before the Court and do other things in relation to property under sub-section (*1*) of section 16, and the production of books of account, the

examination to be submitted to, and the information to be supplied by a creditor in respect of the debt due to him by the debtor under sub-section (*2*) of section 16 ;

[(*f*) the time within which the Collector is required to state to the Court the amount of debt due by the debtor to Government under sub-section (*1*), and the time within which a statement shall be submitted to the Court under sub-section (*3*), of section 26 ;]

(*f*) [*g*] the manner of determining the value of property and other assets under sub-section (*1*), and the manner of calculating the market value of the lands under sub-section (*4*), of section 29 ;

(*g*) [*h*] the form of award under sub-section (*2*) of section 32 and sub-section (*3*) of section 33 ;]

(*h*) [*i*] the form of application under clause (*i*) of sub-section (*3*) of section 38 ;

(*i*) [*j*] the manner in which property may be sold under section 41 ;

(*j*) *the manner of recovery of court-fees under sub-section* (*2*) *of section 44* ;

(*k*) the manner of service of notice under section 45 ;

(*l*) the conditions on which authority to grant loans shall be granted under sub-section (*2*) of section 54.

Bom. VIII of 1938.

56. [(*1*) The Bombay Small Holders Relief Act, 1938, is repealed. Any right, privilege, obligation or liability or contract referred to in section 11 of the said Act shall revive and be enforceable as provided in the said section : [Repeal of Bom. VIII of 1938, XVII of 1879 and Bom. XXVIII of 1939.]

Provided that in regard to persons who are debtors and in respect of whose debts an application under section 4 of this Act can be made, such rights, privileges, obligations and liabilities or contracts shall be enforceable in so far as the enforcement thereof is not inconsistent with the provisions of this Act.]

[(*2*)] (*1*) On the expiry of a period of three years from the date of the coming into operation of this Act (hereinafter in this sub-section referred to as the said date) the Dekkhan Agriculturists' Relief Act, 1879, shall cease to have force : *Repeal of XVII of 1879 and Bom. XXVIII of 1939.*

XVII of 1879.

Provided that nothing in this sub-section shall be deemed to affect, in regard to persons who are debtors and in respect of whose debts an application under section 4 of this Act can be made, anything done in the course of any proceeding pending in any Court on the said date and any such proceeding may be continued, in so far as the continuance is not inconsistent with the provisions of this Act ;

Provided further that nothing in this sub-section shall in any way affect the transfer under section 19 of this Act of any suit or proceeding to which such debtor was a party.

(*3*) The Bombay Agricultural Debtors Relief Act, 1939, is repealed. Bom. XXVIII of 1939.

All Boards established under section 4 of the repealed Act shall be dissolved :

Provided that all proceedings pending before any such Board shall be continued before the Court as if an application under section 4 of this Act had been made to the Court.

Provided further that all appeals pending before any Court under the repealed Act shall be continued and disposed of as if they were appeals under this Act :

Provided also that all appeals against decisions, orders or awards of any Board established under the repealed Act which but for this Act would have been lain shall when presented be deemed to be appeals from the decisions, orders or awards passed by a Court under this Act and shall be disposed of accordingly.

STATEMENT OF OBJECTS AND REASONS.

The Bombay Agricultural Debtors Relief Act was passed in 1939. It was introduced in one or two selected talukas of eight districts in 1942 and in half the Province in 1945. Government has extended it throughout the Province with effect from 1st February 1947.

2. Debt Adjustment Boards established in 1942 were manned by retired officers such as Sub-Judges and Deputy Collectors. The Chairmen of Boards established in 1945 were recruited through the Bombay Sind Public Service Commission from practising pleaders. Experience has shown that the present procedure is not satisfactory. It is, therefore, proposed to dissolve all existing Boards and to entrust the administration of the Act to Civil Judges throughout the Province. The Bill seeks to provide for this object.

3. Briefly stated the important changes proposed to be made in the existing Act are :—

	No. of clause of the Bill.
(*i*) Definition of "Debtor"	2(*5*)
(*ii*) Provisions relating to appeals in sections 9, 11 and 14 have been consolidated. No proceedings in revisions are to be allowed	43
(*iii*) Provisions relating to levy of court fees in sections 11, 18 and 24 have been consolidated and flat rates prescribed	44
(*iv*) Sections 50 and 51 have been simplified and section 55 recast	29, 30 and 33
(*v*) Penalty for collusion (section 56) by a creditor is *also* provided	35
(*vi*) Procedure for execution of awards has been simplified, i.e., the amount of instalment can be recovered as arrears of land revenue if the debtor has made default in payment	38
(*vii*) Pleaders are allowed to appear only in proceedings involving sale mortgage questions	42

4. The sections of the Act relating to powers and constitution of a Board and other sections, the provisions of which are covered by the Civil Procedure Code, Evidence Act, Limitation Act, etc., have not been incorporated in the Bill, e.g. sections 4 to 8, 10, 12, 13, 15, 16, 22, 29, 30, 41, 43, 46, 58, 59, 73, 73-A, 74, 79, 80, 81, 82 and 86.

5. This Bill supersedes L. A. Bill No. XXVII of 1946.

VAIKUNTH L. MEHTA.

12th February 1947.

MO-III Bk Hb 4—5

546

Government of Bombay

LEGAL DEPARTMENT

L. A. BILL No. XIV OF 1947

(As amended by the Select Committee.)

A Bill to consolidate and amend the law for the Relief of Agricultural Debtors in the Province of Bombay.

[Mr. VAIKUNTH L. MEHTA, M.L.A.]

BOMBAY: PRINTED AT THE GOVERNMENT CENTRAL PRESS.

Registered No. B-1

The Bombay Government Gazette

PUBLISHED BY AUTHORITY

TUESDAY, 27TH MAY 1947.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV

(1) Acts of the Local Legislature of the Bombay Province and (2) Acts of the Indian Legislature assented to by the Governor General.

CONTENTS.

	PAGES
BOMBAY ACT No. XXVIII OF 1947—An Act to consolidate and amend the law for the Relief of Agricultural Debtors in the Province of Bombay	257-280

The following Act of the Bombay Legislature having been assented to by the Governor General on the 22nd May 1947 is hereby published for general information.

P. M. LAD,
Secretary to the Government of Bombay,
Legal Department.

BOMBAY ACT No. XXVIII OF 1947.

First published, after having received the assent of the Governor General, in the "Bombay Government Gazette" on the 27th May 1947.)

An Act to consolidate and amend the law for the Relief of Agricultural Debtors in the Province of Bombay.

WHEREAS it is expedient to consolidate and amend the law for the relief of agricultural debtors in the Province of Bombay and for certain other purposes specified herein; It is hereby enacted as follows:—

CHAPTER I.

Preliminary.

Short title and extent.

1. (*1*) This Act may be called the Bombay Agricultural Debtors Relief Act, 1947.

(*2*) It extends to the whole of the Province of Bombay except the City of Bombay.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context—

(*1*) "award" means an award made under sub-section (*4*) of section 8 or section 9, 32 or 33 or as confirmed or modified by the Court in appeal;

(*2*) "co-operative society" means a society registered under the provisions of the Bombay Co-operative Societies Act, 1925;

Bom. VII of 1925.

(*3*) "Court" means the court of the Civil Judge (Senior Division) having ordinary jurisdiction in the area where the debtor ordinarily resides and if there

is no such Civil Judge, the court of the Civil Judge (Junior Division) having such jurisdiction;

(4) "debt" means any liability in cash or kind, whether secured or unsecured, due from a debtor whether payable under a decree or order of any civil court or otherwise but does not include arrears of wages payable in respect of agricultural or manual labour;

(5) "debtor" means—

(a) an individual—

(i) who is indebted;

(ii) who holds land used for agricultural purposes or has held such land at any time not more than 30 years before the 30th January 1940, which has been transferred whether under an instrument or not and which transfer is in the nature of a mortgage although not purporting to be so;

(iii) who has been cultivating land personally for the cultivating seasons in the two years immediately preceding the date of the coming into operation of this Act or of the establishment of the Board concerned under the repealed Act; and

(iv) whose annual income from sources other than agriculture and manual labour does not exceed 33 per cent. of his total annual income or does not exceed Rs. 500, whichever is greater;

(b) an undivided Hindu family—

(i) which is indebted;

(ii) which holds land used for agricultural purposes or has held such land at any time not more than 30 years before the 30th January 1940, which land has been transferred whether under an instrument or not and which transfer is in the nature of a mortgage although not purporting to be so;

(iii) which has been cultivating land personally for the cultivating seasons in the two years immediately preceding the date of the coming into operation of this Act or of the establishment of the Board concerned under the repealed Act; and

(iv) the annual income of which from sources other than agriculture and manual labour does not exceed 40 per cent. of its total annual income and the aggregate of such incomes of the members of which does not exceed Rs. 1,500.

Explanation.—For the purposes of this clause "agriculture" includes horticulture, the raising of crops or garden produce, dairy farming, poultry farming, stock breeding and grazing, but does not include leasing of land or cutting only of wood;

(6) "financing of crops" means advancing of loans as defined in the repealed Act;

(7) "holder" means a holder as defined in clause (11) of section 3 of the Bombay Land Revenue Code, 1879, and includes a holder of land held for the performance of service useful to Government or village community, which service is actually being performed but does not include

Bom V of 1879.

a holder of any land held on behalf of a religious or charitable institution; and the expression "to hold land" shall be construed accordingly;

(*8*) "prescribed" means prescribed by rules;

Bom. XXVIII of 1939. (*9*) "repealed Act" means the Bombay Agricultural Debtors Relief Act, 1939;

Bom. VI of 1925. (*10*) "resource society" shall have the same meaning as it has in the Bombay Co-operative Societies Act, 1925;

(*11*) "rules" means rules made under section 55;

(*12*) "scheduled bank" means a bank included in the Second Schedule to the Reserve Bank of India Act, 1934;

II of 1934.

(*13*) "seasonal finance" means advancing of loans for such purposes as may be prescribed, such loans being repayable on or before the 15th May following;

(*14*) "to cultivate personally" means to cultivate by one's own labour or by the labour of any member of one's family or by servants or hired labour under one's personal supervision or the personal supervision of any member of one's family.

Explanation I.—If a person who was cultivating personally dies leaving as his heir a widow or a minor or a person who is subject to physical or mental disability, such heir shall be deemed to cultivate the land personally notwithstanding the fact that the land is cultivated on behalf of such heir by servants or hired labour or by tenants.

Explanation II.—In the case of an undivided Hindu family, the land shall be deemed to have been cultivated personally if it is cultivated by any member of such family. If there are no adult male co-parceners in such family capable of cultivating the land personally, such family shall be deemed to be cultivating the land personally if the land is cultivated on behalf of such family by servants or hired labour or by tenants;

V of 1908; Bom. V of 1879. (*15*) words and expressions used in this Act, but not defined, have the meanings assigned to them in the Code of Civil Procedure, 1908, or the Bombay Land Revenue Code, 1879, as the case may be.

Savings.

3. Save as otherwise expressly provided, nothing in this Act shall affect the debts and liabilities of a debtor falling under the following heads, namely:—

(*i*) any revenue or tax payable to Government or any other sum due to it by way of loan or otherwise,

(*ii*) any tax payable to a local authority or any other sum payable to such authority by way of loan or otherwise,

(*iii*) any sum due to a co-operative society,

(*iv*) any sum advanced solely for the purpose of financing of crops as provided in the repealed Act or for the purpose of seasonal finance as provided in this Act,

(*v*) any sum due under a decree or order for maintenance passed by a competent Court, and

(*vi*) any sum due to a scheduled bank.

CHAPTER II.

Procedure for adjustment of debts.

Application for adjustment of debts.

4. (*1*) Any debtor ordinarily residing in any local area for which a Board was established under section 4 of the repealed Act on or after the 1st February 1947, or his creditor may make an application before the 1st August 1947 to the Court for the adjustment of his debts.

(*2*) Every application made under sub-section (*1*) shall be in writing in the prescribed form and shall be signed, verified and presented in the prescribed manner.

(*3*) Notwithstanding anything contained in section 3 an application made under this section shall contain the amounts and particulars of all debts specified in that section due by the debtor.

Every creditor and debtor to file a true and correct statement before Court.

5. (*1*) Notwithstanding the fact that no application has been filed under section 4—

(*a*) every creditor, on being required to do so by notice in writing by any of his debtors, shall, within two months from the date of the receipt of such notice, file before the Court a true and correct statement of all his claims against such debtor, and shall at the same time send a copy thereof to such debtor, and

(*b*) every debtor, on being required to do so by notice in writing by any of his creditors, shall, within two months from the date of the receipt of such notice, file before the Court a true and correct statement—

(*i*) of all the debts owed by such debtor;

(*ii*) whether he holds any land used for agricultural purposes and whether he has been cultivating land personally;

(*iii*) of his income from agriculture and from sources other than agriculture in the year preceding the date of the notice.

The debtor shall at the same time send a copy of such statement to such creditor:

Provided that the Court may, for sufficient cause, extend, from time to time, the period within which the creditor or the debtor, as the case may be, may file such statement.

(2) Every debtor or creditor giving a notice under sub-section (1) shall at the same time send a copy thereof to the Court.

(3) In awarding the costs of any proceeding in respect of any application made under section 4 the Court may, on being satisfied that the statement required to be filed under sub-section (1) was, without sufficient cause, not filed within the time specified therein or within the period extended under the proviso to sub-section (1) or incorrectly filed, direct the party in default to bear the whole or any portion of the costs of such proceeding.

Application by debtor jointly and severally liable.

6. (1) If the payment of a debt due by a debtor is guaranteed by a surety or if a debtor is otherwise jointly and severally liable for any debt along with any other person and if the surety or such other person is not a debtor, the debtor may make an application under section 4 for relief in respect of such debt and the Court may after consideration of the facts and circumstances of the case proceed with the adjustment of debts under this Act in so far as such applicant is concerned.

(2) Whenever the debts due by a debtor which are guaranteed by a surety are adjusted under sub-section (1), the surety shall be discharged from liability in respect of the debts or portion of the debts of such debtor which are extinguished under sub-section (1) of section 15, sub-section (3) of section 17, sub-section (5) of section 26, section 34 or sub-section (2) of section 35; and the surety shall not be entitled to proceed against the debtor in respect of such debts or portion.

Assignees from non-debtor not entitled to benefit of this Act.

7. No application shall lie under section 4 for adjustment of any debt due from a debtor to whom such debt has been transferred or assigned after the 1st January 1938 by any person who is not himself a debtor.

Application for recording settlement.

8. (1) If any debtor and any or all of his creditors arrive at a settlement in respect of any debt due by the debtor to the creditor, the debtor or any of the creditors may, within thirty days from the date of such settlement, make an application to the Court for recording such settlement.

(2) Every such application shall be in the prescribed form, and shall be signed and verified in the prescribed manner.

(3) On receipt of such application the Court shall, after giving notice to the creditor or the debtor, as the case may be, and after making such enquiry as it thinks fit, if it is satisfied that the settlement arrived at is *bona fide* and voluntary and is not made with intent

to defeat or delay any of the creditors of the debtor, and is in the interest of the debtor, and that the debtor is a person who fulfils the conditions referred to in clauses (*a*) and (*b*) of sub-section (*1*) of section 17, record such settlement and certify the same. Every such settlement so recorded and certified shall be binding upon the parties thereto and shall not, save as otherwise hereinafter provided, be re-opened.

(*4*) After the Court has recorded and certified a settlement under sub-section (*3*), the Court shall call upon the debtor to make a declaration whether there are any other debts due by the debtor which are not included in the settlement. If the debtor makes a declaration that there are no such debts, the Court shall make an award in terms of such settlement.

(*5*) If the Court is satisfied, after recording such settlement, that there are other debts due from the debtor which are not included in the settlement, the Court shall treat the application made under sub-section (*1*) as an application for adjustment of debts under section 4.

Settlement during pendency of proceedings before Court.

9. Notwithstanding anything contained in the preceding sections, if during the pendency of proceedings before the Court or the Court in appeal, as the case may be, a settlement is arrived at between a debtor and all his creditors and if such Court is satisfied that the settlement has been made by the debtor voluntarily and is for his benefit, such Court may make an award in terms of such settlement.

Certain settlements to be void.

10. Every settlement of a debt due from a debtor to any creditor, which is not certified by the Court under section 8, or in terms of which no award has been made under section 9, shall be void and shall not be recognised by any Court for any purpose whatsoever.

Application under section 4 or 8 to be made only in respect of debtor whose debts are not more than Rs. 15,000.

11. No application under section 4 or 8 shall be entertained by the Court on behalf of or in respect of any debtor, unless the total amount of debts due from him on the date of the application is not more than Rs. 15,000.

Withdrawal of applications.

12. An application for adjustment of debts under section 4 or an application for recording a settlement under section 8 shall not be withdrawn without the leave of the Court.

Consolidation of applications.

13. Where two or more applications for adjustment of debts under section 4 are presented by or against the same debtor, all such applications shall be consolidated. Where such separate applications are presented against joint debtors, all such applications shall be heard together.

Service of notice on debtors and creditors to submit statement of debts.

14. On receipt of an application for adjustment of debts, the Court shall—

(*a*) give notice to the debtor (unless the debtor is himself an applicant) and to every creditor (other than the creditor who is himself an applicant) whose name and address are given in the application, and

(*b*) publish a general notice,

requiring the debtor and all creditors to submit a statement in the prescribed form within one month from the date of the service of the notice or the publication of the general notice, whichever is later :

Provided that if the Court is satisfied that the debtor or any creditor is for good and sufficient cause unable to comply with the notice within the time specified therein it may extend the period for the submission of the statement.

Debts in respect of which no application for adjustment or settlement is made to be void.

15. (*1*) Every debt due from a debtor in respect of which no application has been made under section 4 within the period specified in the said section 4 or in respect of which no application for recording a settlement is made under section 8 within the period specified in the said section 8 or in respect of which an application made to the Court is withdrawn under section 12 and no fresh application is made under section 4 and every debt due from such debtor in respect of which a statement is not submitted to the Court by the creditor in compliance with the provisions of section 14 shall be extinguished.

(*2*) Nothing in this section shall apply to any debt due from any person who has by his declaration, act or omission intentionally caused or permitted his creditor to believe that he is not a debtor for the purposes of this Act or that no application under section 4 can be entertained in respect of any debt owed by such person to such creditor by reason of the provisions of section 11.

Duties of debtors and creditors.

16. (*1*) Every debtor by or against whom an application is made under section 4 or who is a party to an application made under section 8 shall produce all books of accounts and shall give such inventories of his property and such lists of his creditors and debtors and of the debts due from and to him, submit to such examination in respect of his property or his creditors, attend at such time before the Court, and generally do all such things as may be required by the Court or as may be prescribed.

(*2*) It shall be the duty of every creditor to produce such books of accounts, to submit to such examination and to supply such information in respect of the debt due to him by the debtor and the securities held by him, as may be required by the Court or as may be prescribed.

Preliminary issues.

17. (*1*) On the date fixed for the hearing of an application made under section 4, the Court shall decide the following points as preliminary issues :—

(*a*) whether the person for the adjustment of whose debts the application has been made is a debtor;

(*b*) whether the total amount of debts due from such person on the date of the application exceeds Rs. 15,000.

(*2*) If the Court finds that such person is not a debtor or that the total amount of debts due from such person on the date of the application is more than Rs. 15,000, the Court shall dismiss the application forthwith:

Provided that before the application is so dismissed the creditors or any of them may remit any specific portion of their claim so as to reduce the total amount of the debts of all the creditors due from such person on the date of the application to a sum not exceeding Rs. 15,000. In such case the Court shall not dismiss the application but shall proceed further with the same.

(*3*) The portion of the debts in respect of which the claim is remitted under sub-section (*2*) shall be extinguished.

Court-fee to be refunded to creditor.

18. If an application made by a creditor under section 4 is dismissed under section 17 on the ground that the total amount of the debts due from a debtor on the date of the application is more than Rs. 15,000, the Court shall direct the amount of the court-fee paid by the creditor making the application to be refunded to the creditor.

Transfer of pending suits, appeals, applications and proceedings to the Court.

19. (*1*) All suits, appeals, applications for execution and proceedings other than revisional in respect of any debt pending in any civil or revenue court shall, if they involve the questions whether the person from whom such debt is due is a debtor and whether the total amount of debts due from him on the date of the application exceeds Rs. 15,000, be transferred to the Court.

(*2*) When an application for adjustment of debts made to a Court under section 4 or a statement submitted to a Court under section 14 includes a debt in respect of which a suit, appeal, application for execution or proceeding other than revisional is pending before a civil or revenue court, the Court shall give notice thereof to such other court. On receipt of such notice, such other court shall transfer the suit appeal, application or proceeding, as the case may be, to the Court.

(*3*) When any suit, appeal, application or proceeding is transferred to the Court under sub-section (*1*) or sub-section (*2*), the Court shall proceed as if an application under section 4 had been made to it.

(4) If the Court, to which any suit, appeal, application or proceeding is transferred under sub-section (1) or sub-section (2), decides the preliminary issue mentioned in clause (a) of sub-section (1) of section 17 in the negative or that mentioned in clause (b) of the said sub-section (1) in the affirmative, it shall retransfer the suit, appeal, application or proceeding to the court from which it had been transferred to itself after the disposal and subject to the result of the appeal where an appeal is filed, and after the expiry of the period prescribed for an appeal where no appeal is filed.

(5) When any suit, appeal, application or proceeding is retransferred to the court under sub-section (4), the said court shall proceed with the same.

Taking of accounts.

20. If the Court finds the person making an application under section 4 or the person against whom an application is made under the said section 4 to be a person—

(a) who is a debtor, and

(b) the total amount of debts due from whom on the date of the application is not more than Rs. 15,000,

the Court shall proceed to take accounts in the manner hereinafter provided.

Examination of creditor and debtor.

21. In an application for the adjustment of debts if the amount of the creditor's claim is disputed, the Court shall, when taking accounts, examine both the creditor and the debtor as witnesses, unless for reasons to be recorded the Court deems it unnecessary so to do..

Mode of taking accounts.

22. Notwithstanding any agreement between the parties or the persons (if any) through whom they claim, as to allowing compound interest or setting off the profits of mortgaged property without an account in lieu of interest, or otherwise determining the manner of taking the account, and notwithstanding any statement or settlement of account, or any contract purporting to close previous dealings and create a new obligation, the Court shall inquire into the history and merits of the case and take account between the parties from the commencement of the transactions subsisting between the parties and the persons (if any) through whom they claim, out of which the claim has arisen and determine the amount due to each of the creditors at the date of the application made under section 4, according to the following rules, namely :—

(1) (a) Separate accounts of principal and interest shall be taken ;

(*b*) In the account of principal there shall be debited to the debtor only such money as may from time to time have been actually received by him or on his account from the creditor, and the price of goods, if any, sold to him by the creditor;

(*c*) In the accounts of principal and interest there shall also be debited the amounts, if any, respectively due for peincipal (including costs) and interest under any decree or order passed by a competent court in respect of any debt:

Provided that if such decree or order does not specify the amount of principal and interest separately or does not contain any material for determining the same, two-third and one-third of the amount awarded by such decree or order shall for purposes of this clause, be deemed to be the amount awarded on account of principal (including costs) and interest, respectively.

(*2*) In the case of transactions which commenced before the 1st January 1931 the Court shall take the account up to the date of the institution of the application and in the account of interest there shall be debited to the debtor, simple interest on the balance of principal for the time being outstanding at the rate agreed upon between the parties or at the rate allowed under any decree passed between the parties, or at a rate not exceeding 12 per cent. per annum, whichever is the lowest. The amount found due in respect of principal as well as in respect of interest shall, each separately, be reduced by 40 per cent. notwithstanding that a decree or order of a civil court was passed in respect of any such amount or portion thereof. The amounts so reduced shall be taken to represent the amounts due in respect of principal and interest on the date of the institution of the application.

(*3*) In the case of transactions which commenced on or after the 1st January 1931 but before the 1st January 1940 in the account of interest there shall be debited to the debtor, simple interest on the balance of principal for the time being outstanding at the rate agreed upon between the parties, or at the rate allowed under any decree passed between the parties, or at a rate not exceeding 9 per cent. per annum, whichever is the lowest. The amount found due on the date of the institution of the application in respect of principal as well as interest shall each separately be reduced by 30 per cent. notwithstanding that a decree or order of a civil court was passed in respect of any such amount or portion thereof. The amounts so reduced shall be taken to represent the amounts due in respect of principal and interest on the date of the institution of the application.

(4) In the case of transactions which commenced on or after the 1st January 1940, in the account of interest there shall be debited to the debtor simple interest on the balance of principal for the time being outstanding at the rate agreed upon between the parties, or at the rate allowed under any decree passed between the parties, or at a rate not exceeding 6 per cent. per annum, whichever is the lowest.

(5) All money paid by or on account of the debtor to the creditor or on his account and all profits, service or other advantages of every description received by the creditor in the course of the transactions (estimated, if necessary, at such money-value as the Court in its discretion may determine) shall be credited first in the account of interest, and when any payment is more than sufficient to discharge the balance of interest due at the rate specified in rule (2), (3) or (4), as the case may be, the residue of such payment shall be credited to the debtor in the account of principal.

(6) The accounts of principal and interest shall be made up to the date of the institution of the application, and the aggregate of the balance, if any, appearing due on both such accounts against the debtor on that date shall be deemed to be the amount due at that date, except when the balance appearing due on the interest-account exceeds that appearing due on the principal-account, in which case, double the latter balance shall be deemed to be the amount then due.

Provided that where transactions between the parties have commenced more than 30 years before the 30th January 1940 any settlement of accounts which has been last arrived at between the parties before the said period of 30 years and which is in writing and bears the signature of the debtor or the person through whom the liability is derived shall be accepted as binding between the parties and no inquiry into the history and merits of the case shall be made prior to the date of such settlement.

In certain cases rent may be charged in lieu of profits.

23. Where any mortgaged property is in the possession of the mortgagee or his tenants other than the mortgagor and the Court is unable to determine what profits have actually been received, it may fix a fair rent for such property and charge to the mortgagee such rent as profits for the purpose of section 22:

Provided that, if it be proved that in any year there was any suspension or remission of rent or land revenue of such land under section 84A of the Bombay Land Revenue Code, 1879, an abatement of the whole or part of such amount may be allowed for the year.

Bom. V of 1879.

Power of Court to declare transfer purporting to be sale to be in nature of mortgage.

24. (*1*) Notwithstanding anything to the contrary contained in any law, custom, or contract, whenever it is alleged during the course of the hearing of an application made under section 4 that any transfer of land by a person whose debts are being adjusted under this Act or any other person through whom he inherited it was a transfer in the nature of a mortgage, the Court shall declare the transfer to be a mortgage, if the Court is satisfied that the circumstances connected with that transfer showed it to be in the nature of a mortgage.

(*2*) Any agricultural labourer may make an application before the 1st August 1947 to the Court that any transfer of land by him or any other person through whom he inherited it was a transfer in the nature of a mortgage. On hearing the application, the Court shall, notwithstanding anything to the contrary contained in any law, custom, or contract, declare the transfer to be a mortgage, if it is satisfied that the circumstances connected with the transfer showed it to be in the nature of a mortgage. When the Court makes any such declaration, the applicant shall, notwithstanding anything contained in the definition of "debtor" in sub-section (*5*) of section 2, be deemed to be a debtor for the purposes of this Act and the Court shall proceed as if an application under section 4 had been made to it.

Provisions of section 24 not to apply to certain transfers and transferees.

25. Nothing in section 24 shall apply to—

(*i*) any transfer which has been adjudged to be a transfer other than a mortgage by a decree of a court of competent jurisdiction or by a Board established under section 4 of the repealed Act; and

(*ii*) any *bona fide* transferee for value without notice of the real nature of such transfer or his representative where such transferee or representative holds under a registered deed executed on or before the 15th day of February 1939.

Notice to Collector, co-operative societies, Registrar, local authorities and others.

26. (*1*) On receipt of an application for adjustment of debts, the Court shall give notice to the Collector requiring him to state to the Court within such time as may be fixed by it the amount of the debt due by the debtor to Government.

(*2*) The Court shall also give similar notice to any local authority, co-operative society or scheduled bank to which any debt may be due by the debtor and also to any person who is entitled to maintenance from the debtor, under a decree or order passed by a competent Court. In the case of any debt due to a co-operative society, the Court shall also give notice to the Registrar of Co-operative Societies or to such officer as the Registrar may nominate in this behalf.

(3) On receipt of such notice the Collector, the local authority, the co-operative society or the scheduled bank, or the person entitled to maintenance, as the case may be, shall, within such time as may be fixed by the Court, from time to time submit a statement to the Court showing the total amount of the debt due by the debtor as also any recurring liability against such debtor in respect of the liability for maintenance under the decree or order.

(4) The Collector, the co-operative society and the scheduled bank shall also furnish a statement to the Court showing the amount of remission which the Provincial Government, the co-operative society or the scheduled bank, as the case may be, is willing to give in respect of the debt.

(5) The portion of any debt remitted under sub-section (4), and unless the Court otherwise directs any debt or portion thereof in respect of which no statement is submitted under sub-section (3), shall be extinguished.

Court's duty to determine particulars, value, etc., of property.

27. After taking accounts under section 22 the Court shall in the manner hereinafter provided determine—

(1) the particulars of the property belonging to the debtor,

(2) the value of the said property,

(3) the particulars of any incumbrances on the said property, and

(4) the paying capacity of the debtor.

Fraudulent alienations or incumbrances void.

28. (1) If in the course of the hearing of an application made under section 4, the Court finds that the debtor has made an alienation of property or created any incumbrance thereon with intent to defeat or delay any of his creditors, the Court shall, by notice, summon the debtor and the person in whose favour the alienation or incumbrance is made or created to appear before it on a day to be specified in the notice.

(2) On the day specified in the notice or such other day to which the hearing may be adjourned the Court shall hear the parties and if it is satisfied that the alienation was made or the incumbrance was created with intent to defeat or delay any of the creditors of the debtor, the Court shall declare the alienation or incumbrance to be void.

(3) Nothing in this section shall impair the rights of an alienee or the holder of an incumbrance in good faith and for valuable consideration.

Value of property of debtor to be determined by Court in prescribed manner.

29. (1) Subject to the provisions of sub-sections (2), (3) and (4), the value of the property and other assets of a debtor for the purposes of ascertaining the paying capacity of the debtor under section 27 shall be determined by the Court in the prescribed manner.

(2) The property or assets which are exempt from attachment in execution of a decree of a civil court under the Code of Civil Procedure, 1908, shall not be taken into account. V of 1908

(3) The amount of the debts mentioned in section 3 shall be deducted.

(4) The market value of the lands, which under any law for the time being in force, are not transferable or alienable except with the previous sanction of the Collector or the Provincial Government, shall be calculated in such manner as may be prescribed.

Paying capacity.

30. The paying capacity of the debtor shall, for the purposes of this Act, be deemed to be sixty per cent. of the value of all the property of the debtor:

Provided that when any portion of such property yields income but the market value of such portion cannot be determined, the value of such portion shall be the amount of the income capitalized at six per cent. per annum.

Debts payable by debtors to be scaled down.

31. (1) Notwithstanding any law, custom, contract, award or decree of a court to the contrary the amounts found due under section 22 from a debtor shall be further scaled down in the manner hereinafter provided.

(2) If all the debts found due by a debtor after taking accounts under section 22, are unsecured, such debts shall be further scaled down *pro rata* to the paying capacity of the debtor.

(3) If all the debts found due by a debtor after taking accounts under section 22, are secured debts, and the total amount of such debts is more than sixty per cent. of the value of the property belonging to the debtor, such debts shall be further scaled down *pro rata* to the paying capacity of the debtor.

(4) If the debts found due by a debtor after taking accounts under section 22 are both secured and unsecured, and if the total amount of the secured debts is more than sixty per cent. of the value of the property on which such debts are secured, the secured debts shall be further scaled down *pro rata* to sixty per cent. of the value of the property on which such debts are secured and the unsecured debts shall be further scaled down *pro rata* to sixty per cent. of the value of the other property belonging to the debtor over which no debts are secured.

Award.

32. (1) After determining the amount of debts scaled down in the manner provided in section 31 the Court shall, save as otherwise provided in section 33, make an award.

(2) The award shall be in the prescribed form and shall be drawn up subject to the following provisions :—

(*i*) the amount of the secured debts scaled down shall be charged on the properties on which they may have been secured ;

(*ii*) subject to clause (*i*) the amount of unsecured debts shall be charged on all the properties of the debtor ;

(*iii*) in fixing the priority in which debts shall be paid the following order shall be followed :—

(*a*) debts due to Government, which are charged on the immoveable property belonging to the debtor or which are recoverable as the current year's land revenue,

(*b*) debts due to local authorities, which are charged on the immoveable property belonging to the debtor or which are recoverable as the current year's dues,

(*c*) loans given by resource societies or by persons authorised to advance loans under section 78 of the repealed Act or section 54 of this Act for the financing of crops under the repealed Act or for seasonal finance under this Act after the 30th January 1940 and other loans given for financing crops after the 1st January 1939 and before the 30th January 1940,

(*d*) secured debts in order of priority,

(*e*) debts due to Government, local authorities and other bodies including co-operative societies, and recoverable as arrears of land revenue,

(*f*) other debts due to co-operative societies,

(*g*) unsecured debts :

Provided that in the case of unsecured debts they shall be paid *pro rata*;

(*iv*) the total annual instalments shall not exceed twelve:

Provided that in fixing the amount of instalments in which the debts shall be paid the Court shall ascertain the net annual income of the debtor and the annual instalments payable by the debtor shall not exceed his net annual income.

Explanation.—For the purposes of this clause, the net annual income of the debtor shall mean the balance of his annual income after deducting (*i*) such sum as may be considered necessary for the payment of the liability, if any, imposed on the debtor under a decree or order for maintenance passed by a competent Court, (*ii*) such sum as may be considered necessary for the maintenance of the debtor and his dependants, and (*iii*) the sum required by the debtor to pay the assessment and taxes in respect of the current year to Government and to local authorities and to pay off loans borrowed for the purpose of the financing of crops under the repealed Act or seasonal finance under this Act;

(*v*) the Court may pass an order for the delivery of possession of any property notwithstanding any law or contract to the contrary;

(*vi*) the rate of interest shall not exceed 6 per cent. per annum or such less rate as may be notified in this behalf by the Provincial Government or the rate agreed upon between the parties when the debt was originally incurred or the rate allowed by the decree in respect of such debt, whichever is the lowest.

Court to prepare scheme for adjustment of debts through Provincial Land Mortgage Bank.

33. (*1*) Where the amount of debts of the debtor as scaled down under section 31 by it exceeds half the value of the debtor's immoveable property as determined by it, the Court shall intimate to the creditors the amount of the said debts of the debtor and the said value of the debtor's immoveable property and call upon them to state in writing within a specified period not exceeding one month whether they agree to the further scaling down of the said debts so as to reduce them to a sum not exceeding half the said value of the immoveable property of the debtor. If all the creditors agree to the further scaling down of the debts, the Court shall make an order directing the debtor to pay the amount of such debts so agreed upon within a period of one month from the date of the order.

(2) Unless the debtor pays the amount of such debts within a period of one month from the date of the order or such extended period not exceeding one month as the Court may allow and produces the creditors' receipt therefor, the Court shall make an award in the prescribed form directing that the Primary Land Mortgage Bank situated in the local area or if there is no such Primary Land Mortgage Bank in that local area, the Bombay Provincial Co-operative Land Mortgage Bank registered under the Bombay Co-operative Societies Act, 1925, shall pay the creditors in cash the debt as finally scaled down or, if the creditors so desire, in bonds issued by the Bombay Provincial Co-operative Land Mortgage Bank, such bonds being guaranteed by the Provincial Government, for such amount in full satisfaction of all the debts due to them from the debtor. The Court shall further direct that such amount shall be charged on all the immoveable property of the debtor.

Bom. VII of 1925.

(3) The Bank shall be entitled to recover the amount due to it from the debtor in such annual instalments and at such rate of interest not exceeding six per cent. per annum as the Provincial Government may notify in this behalf in the *Official Gazette*, from time to time.

(4) All sums due under an award made in favour of the bank under this section shall be recoverable as arrears of land revenue.

No recovery of amount in excess of debts scaled down.

34. The amount of debts scaled down under section 31 or further scaled down under section 33 shall for the purposes of this Act be the amount due by the debtor in respect of the said debts and the portion of the debts in excess of this amount shall be extinguished.

Debts not to be scaled down in case of collusion.

35. If the Court making an award under section 32 is at any stage of the proceeding satisfied—

(1) that the debtor had in collusion with any creditor furnished in such proceeding incorrect information in respect of the debt due by him to such creditor with a view to defeat the lawful claims of any other creditor, the Court may refuse to scale down any of the debts of such debtor in the manner provided in section 31 and may make an award for the full amount of the debts due from such debtor;

(2) that any claim by a creditor in such proceeding had been put forward in collusion between the debtor and such creditor with a view to defeat the lawful claims of any other creditor, the Court shall order that the debt due by the debtor to such creditor shall be extinguished and such debt shall not be recoverable.

Ex parte proceedings if any party does not appear.

36. (*1*) Notwithstanding that the person for the adjustment of whose debts an application has been made under section 4 or any of his creditors does not appear on the date fixed for the hearing of the application or on any date to which it may be adjourned, the Court shall proceed *ex parte* to hear the application, decide the preliminary issues and, if necessary, make the award, on the evidence available.

(*2*) When an application made under section 4 is heard and disposed of *ex parte* under sub-section (*1*), the decision on the preliminary issues or the award shall not, except for sufficient reasons, be reopened merely on the ground that any of the parties thereto did not appear at the hearing.

Re-opening of award and re-adjustment of debts.

37. If, after an award is made under section 32, the Court finds on an application made to it by any party or otherwise, that the debtor has other property which was not disclosed to the Court when the award was made, or that any property included in the award did not belong to the debtor, the Court may, notwithstanding anything contained in this Act, re-open the award and readjust the debts in accordance with the provisions of this Act :

Provided that where the Court is satisfied that the non-disclosure of such property was in consequence of any fraud on the part of the debtor, the Court in revising the award shall not give the debtor the benefit of section 31.

Award to be registered : how executed.

38. (*1*) Every award made under this Act shall, on payment of the court-fee payable under section 44, be registered under the Indian Registration Act, 1908, after the expiry of the period provided for an appeal, if an appeal is allowed but no appeal is filed and after the disposal of the appeal, if an appeal is filed. XVI of 1908.

(*2*) The court-fee on the award shall be paid by the party ordered by the Court to bear the costs :

Provided that any creditor who is not ordered to bear the costs may pay such court-fee. Such creditor shall be entitled to recover the amount of court-fee paid by him from the debtor with the first instalment payable to him under the award :

Provided further that no court-fee shall be payable by co-operative society.

(*3*) The award so registered shall be executed as follows :—

(*i*) If the debtor makes default in the payment of any instalment due under the award to any creditor such creditor may apply in the prescribed form to the Court for execution of the award.

(*ii*) If the Court on receipt of such application is satisfied that the debtor has made default in the payment of the instalment the Court shall transfer the award for execution to the Collector and thereupon the Collector shall recover the amount of the instalment from the debtor as arrears of land revenue :

Provided that nothing in this sub-section shall affect the right of Government, a local authority or a co-operative society to have recourse to any mode of recovery allowable by any law for the time being in force.

Postponement of payment of instalment in case of remissions, etc.

39. (*1*) Whenever from any cause the payment of one-half or more of the land revenue payable to the Provincial Government is suspended or remitted the payment of the whole of the instalment due for that year and the full amount of the instalment due for each subsequent year under an award made under section 8, 9, 32 or 33 shall be postponed for one year.

(*2*) Whenever from any cause the payment of any portion less than one-half of the land revenue payable to the Provincial Government is suspended or remitted one-half of the amount of the instalment for that year and the full amount of the instalment due for each subsequent year under an award made under section 8, 9, 32 or 33 shall be postponed for one year.

No alienation by debtor before discharge of debts valid.

40. Notwithstanding any law or contract but subject to the provisions of section 41, no alienation of any property belonging to a debtor who is a party to any proceedings or award under this Act, made by him before all his debts are discharged shall be valid, except with the previous sanction of the Provincial Government.

Court may order sale of debtor's property in liquidation of his debt.

41. If the Court or the Court hearing an appeal against the award is at any time satisfied that it is in the interest of a debtor that any part of his property should be sold in liquidation of his debt or part thereof, such Court may permit the debtor to sell such part of the property for such purpose within a specified period. If the debtor fails so to sell it, such Court may order an officer of the Court to sell the same. The property ordered to be sold under this section shall be sold by such officer in the manner prescribed :

Provided that the part of the property ordered to be sold under this section shall not exceed the part liable to be sold under sub-section (*2*) of section 47.

Pleaders, etc., excluded from appearance.

42. Except in proceedings under sections 24 and 28 no pleader shall be entitled to appear on behalf of any party in any proceeding before the Court or the Court in appeal under this Act :

Provided that if the Court after examining the parties to any proceeding before it or the Court in appeal is of opinion that any of the parties is not sufficiently competent to represent his case and that in the interest of justice it is necessary to allow such party the assistance of any pleader, it may allow the parties to be represented at their own cost by a pleader :

Provided further that pleader's fees shall not be allowed as part of the costs for the appearance of a pleader in any proceedings under this Act.

Appeals.

43. Notwithstanding anything contained in any other law and save as otherwise provided in section 51,

(*1*) an appeal shall lie—

(*i*) from every order passed under sub-section (*3*) of section 8;

(*ii*) from every order passed under section 17;

(*iii*) from every order passed under section 24;

(*iv*) from every order passed under section 28;

(*v*) from every order passed under sub-section (*2*) of section 36;

(*vi*) from every award made under this Act other than an award made in terms of a settlement under sub-section (*4*) of section 8 or under section 9 or an award made under section 33 before the making of which the creditors' agreement has been obtained under sub-section (*1*) thereof or an award before the making of which neither the debtor nor any of the creditors produced evidence to enable the Court to determine the amount of debt due from the debtor;

(*2*) an appeal from the Court shall lie to the Court of the District Judge;

(*3*) no second appeal shall lie against any decision, order or award of the Court under this Act.

Court-fees.

44. (*1*) Notwithstanding anything contained in the Court-fees Act, 1870, court-fees payable in respect of proceedings under this Act shall be at the following rates :— VII of 1870.

(*i*) on an application under sub-section (*1*) of section 4 or of section 8 or on an award under sub-section (*4*) of section 8 or section 9—Re. 1;

(*ii*) on an award other than an award specified in clause (*i*)—Re. 1 for every hundred rupees, or part thereof, of the amount of the award, subject to a maximum of Rs. 50;

(*iii*) on an appeal against a decision of the Court under sub-section (*3*) of section 8 or sub-section (*2*) of section 17—Rs. 2;

(*iv*) on an appeal other than an appeal specified in clause (*iii*)—Re. 1 for every hundred rupees, or part thereof, of the amount of the award, subject to a maximum of Rs. 50.

(*2*) Notwithstanding anything contained in any law, the court-fees payable in respect of proceedings under this Act shall be a first charge on the property of the party ordered to pay the costs and shall be recoverable in such manner as may be prescribed.

Notice how served.

45. Any notice required to be served under this Act shall be served in the manner provided in the Code of Civil Procedure, 1908; and when rules are made in that behalf in such manner as may be prescribed. V of 1908.

V of 1908.

46. Save as otherwise expressly provided in this Act, the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings under this Chapter. Provisions of Civil Procedure Code to apply to proceedings.

CHAPTER III.

Insolvency Proceedings.

47. (*1*) If at any stage of the proceedings under Chapter II the Court finds that the income of the debtor and his moveable property are not sufficient to allow his debts to be liquidated by annual instalments not exceeding twelve in number, the Court shall make an order adjudicating the debtor an insolvent. Court to declare debtor insolvent in certain circumstances.

(*2*) After the debtor has been adjudicated an insolvent, the Court shall direct that such portion of the property of the debtor, liable to attachment and sale under section 60 of the Code of Civil Procedure, 1908, excluding such portion thereof as the Provincial Government shall from time to time notify in the *Official Gazette* as the minimum necessary for the maintenance of the debtor and his dependants, as may be required to liquidate all the debts of the debtor, shall immediately be sold free of all incumbrances in liquidation of all debts outstanding against such debtor.

V of 1908.

48. The order of adjudication made under section 47 shall have the force of an order made by a competent court in the exercise of its powers under section 27 of the Provincial Insolvency Act, 1920. Procedure in insolvency proceedings.

V of 1920.

49. The proceeds realised by the sale of the property of the insolvent under section 47 shall be distributed in the order of priority specified in clause (*iii*) of sub-section (*2*) of section 32. Distribution of assets of insolvent.

50. No application or proceeding in regard to the insolvency of a debtor shall lie in or shall be dealt with by any other Court. Bar to application in insolvency in other courts.

51. No appeal shall lie from any order passed under this Chapter except on the ground that the insolvent has failed to disclose all the material facts relating to his assets and liabilities. Appeals barred.

CHAPTER IV.

Miscellaneous.

52. In computing the period of limitation for the institution of any suit or proceeding in respect of any debt due from any person who is held not to be a debtor by the Court or the Court in appeal the period during which the proceedings were pending before the court in respect of such debt shall be excluded. Period of proceeding before Courts under this Act to be excluded.

Alienation of standing crops, etc., before repayment of loan prohibited.

53. (*1*) No person, who is a party to any proceedings or award under this Act and who is indebted to a resource society or any person authorised to advance loans under section 78 of the repealed Act or section 54 of this Act on account of any loan advanced to him for the financing of crops under the repealed Act or seasonal finance under this Act, shall hypothecate or sell the standing crops or the produce of his land without the previous permission of the society or of the person, as the case may be, until such loan has been repaid in full.

(*2*) Any person who hypothecates or sells the standing crop or the produce of his land in contravention of sub-section (*1*), shall, on conviction, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 500.

(*3*) No criminal Court shall take cognizance of any offence under this section except on the complaint in writing of the Court before which the proceedings were held or which made the award.

Power of Provincial Government to authorise any person to advance loans to debtors.

54. (*1*) The Provincial Government may by notification in the *Official Gazette* authorise in any local area any person to advance loans to debtors who are parties to any proceedings under this Act or in respect of whose debts an adjustment has been made under this Act.

(*2*) Such authority shall be granted on such conditions as may be prescribed.

Rules.

55. (*1*) The Provincial Government may by notification in the *Official Gazette* and subject to the condition of previous publication from time to time, make rules for carrying into effect the purposes of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing provision, such rules may be made for all or any of the following purposes, namely :—

(*a*) the purposes for which loans may be advanced under clause (13) of section 2 ;

(*b*) the form of application under sub-section (*2*) of section 4 and the manner of signing, verification and presentation thereof ;

(*c*) the form of application and the manner of signing and verification thereof under sub-section (*2*) and the manner of giving notice under sub-section (*3*) of section 8 ;

(*d*) the manner of giving notice and publication of general notice and the form of statement to be submitted under section 14 ;

(*e*) the inventories of property, lists of creditors and of debtors and of debts due to and from a debtor, the examination in respect of property or creditors, the time at which the debtors shall attend before the Court and do other things in relation to property under sub-section (*1*) of section 16, and the production of books of account, the

examination to be submitted to, and the information to be supplied by a creditor in respect of the debt due to him by the debtor under sub-section (*2*) of section 16 ;

(*f*) the manner of determining the value of property and other assets under sub-section (*1*), and the manner of calculating the market value of the lands under sub-section (*4*), of section 29 ;

(*g*) the form of award under sub-section (*2*) of section 32 and sub-section (*2*) of section 33 ;

(*h*) the form of application under clause (*i*) of sub-section (*3*) of section 38 ;

(*i*) the manner in which property may be sold under section 41 ;

(*j*) the manner of recovery of Court-fees under sub-section (*2*) of section 44 ;

(*k*) the manner of service of notice under section 45 ;

(*l*) the conditions on which authority to grant loans shall be granted under sub-section (*2*) of section 54.

Repeal of Act XVII of 1879 and Bom. XXVIII of 1939.

56. (*1*) On the expiry of a period of three years from the date of the coming into operation of this Act (hereinafter in this sub-section referred to as the said date) the Dekkhan Agriculturists' Relief Act, 1879, shall cease to have force :

XVII of 1879.

Provided that nothing in this sub-section shall be deemed to affect, in regard to persons who are debtors and in respect of whose debts an application under section 4 of this Act can be made, anything done in the course of any proceeding pending in any Court on the said date and any such proceeding may be continued, n so far as the continuance is not inconsistent with the provisions of this Act :

Provided further that nothing in this sub-section shall in any way affect the transfer under section 19 of this Act of any suit or proceeding to which such debtor was a party.

Bom. XXVIII of 1939.

(*2*) The Bombay Agricultural Debtors Relief Act, 1939, is repealed.

All Boards established under section 4 of the repealed Act shall be dissolved :

Provided that all proceedings pending before any such Board shall be continued before the Court as if an application under section 4 of this Act had been made to the Court.

Provided further that all appeals pending before any Court under the repealed Act shall be continued and disposed of as if they were appeals under this Act :

Provided also that all appeals against decisions, orders or awards of any Board established under the repealed Act which but for this Act would have lain shall when presented be deemed to be appeals from the decisions, orders or awards passed by a Court under this Act and shall be disposed of accordingly.

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.

L. A. BILL No. XIV OF 1947.

A Bill to consolidate and amend the law for the Relief of Agricultural Debtors in the Province of Bombay.

(As read for the third time and passed by the Legislative Assembly on the 9th April 1947.)

(As read for the third time and passed by the Legislative Council on the 11th April 1947.)

WHEREAS it is expedient to consolidate and amend the law for the relief of agricultural debtors in the Province of Bombay and for certain other purposes specified herein; It is hereby enacted as follows:—

CHAPTER I.

Preliminary.

Short title and extent.

1. (*1*) This Act may be called the Bombay Agricultural Debtors Relief Act, 1947.

(*2*) It extends to the whole of the Province of Bombay except the City of Bombay.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context—

(*1*) "award" means an award made under sub-section (*4*) of section 8 or section 9, 32 or 33 or as confirmed or modified by the Court in appeal;

Bom. VII of 1925.

(*2*) "co-operative society" means a society registered under the provisions of the Bombay Co-operative Societies Act, 1925;

(*3*) "Court" means the court of the Civil Judge (Senior Division) having ordinary jurisdiction in the area where the debtor ordinarily resides and if there is no such Civil Judge, the court of the Civil Judge (Junior Division) having such jurisdiction;

(*4*) "debt" means any liability in cash or kind, whether secured or unsecured, due from a debtor whether payable under a decree or order of any civil court or otherwise but does not include arrears of wages payable in respect of agricultural or manual labour;

(*5*) "debtor" means—

(*a*) an individual—

(*i*) who is indebted;

MO-1 Bk Hb 31—1

(*ii*) who holds land used for agricultural purposes or has held such land at any time not more than 30 years before the 30th January 1940, which has been transferred whether under an instrument or not and which transfer is in the nature of a mortgage although not purporting to be so;

(*iii*) who has been cultivating land personally for the cultivating seasons in the two years immediately preceding the date of the coming into operation of this Act or of the establishment of the Board concerned under the repealed Act; and

(*iv*) whose annual income from sources other than agriculture and manual labour does not exceed 33 per cent. of his total annual income or does not exceed Rs. 500, whichever is greater;

(*b*) an undivided Hindu family—

(*i*) which is indebted;

(*ii*) which holds land used for agricultural purposes or has held such land at any time not more than 30 years before the 30th January 1940, which land has been transferred whether under an instrument or not and which transfer is in the nature of a mortgage although not purporting to be so;

(*iii*) which has been cultivating land personally for the cultivating seasons in the two years immediately preceding the date of the coming into operation of this Act or of the establishment of the Board concerned under the repealed Act; and

(*iv*) the annual income of which from sources other than agriculture and manual labour does not exceed 40 per cent. of its total annual income and the aggregate of such incomes of the members of which does not exceed Rs. 1,500.

Explanation.—For the purposes of this clause "agriculture" includes horticulture, the raising of crops or garden produce, dairy farming, poultry farming, stock breeding and grazing, but does not include leasing of land or cutting only of wood;

(*6*) "financing of crops" means advancing of loans as defined in the repealed Act;

(*7*) "holder" means a holder as defined in clause (11) of section 3 of the Bombay Land Revenue Code, 1879, and includes a holder of land held for the performance of service useful to Government or village community, which service is actually being performed but does not include a holder of any land held on behalf of a religious or charitable institution; and the expression "to hold land" shall be construed accordingly; Bom. V of 1879.

(*8*) "prescribed" means prescribed by rules;

Bom. XXVIII of 1939.

(*9*) "repealed Act" means the Bombay Agricultural Debtors Relief Act, 1939;

Bom. VII of 1925.

(*10*) "resource society" shall have the same meaning as it has in the Bombay Co-operative Societies Act, 1925;

(*11*) "rules" means rules made under section 55;

II of 1934.

(*12*) "scheduled bank" means a bank included in the Second Schedule to the Reserve Bank of India Act, 1934;

(*13*) "seasonal finance" means advancing of loans for such purposes as may be prescribed, such loans being repayable on or before the 15th May following;

(*14*) "to cultivate personally" means to cultivate by one's own labour or by the labour of any member of one's family or by servants or hired labour under one's personal supervision or the personal supervision of any member of one's family.

Explanation I.—If a person who was cultivating personally dies leaving as his heir a widow or a minor or a person who is subject to physical or mental disability, such heir shall be deemed to cultivate the land personally notwithstanding the fact that the land is cultivated on behalf of such heir by servants or hired labour or by tenants.

Explanation II.—In the case of an undivided Hindu family, the land shall be deemed to have been cultivated personally if it is cultivated by any member of such family. If there are no adult male co-parceners in such family capable of cultivating the land personally, such family shall be deemed to be cultivating the land personally if the land is cultivated on behalf of such family by servants or hired labour or by tenants;

V of 1908. Bom. V of 1879.

(*15*) words and expressions used in this Act, but not defined, have the meanings assigned to them in the Code of Civil Procedure, 1908, or the Bombay Land Revenue Code, 1879, as the case may be.

Savings.

3. Save as otherwise expressly provided, nothing in this Act shall affect the debts and liabilities of a debtor falling under the following heads, namely:—

(*i*) any revenue or tax payable to Government or any other sum due to it by way of loan or otherwise,

(*ii*) any tax payable to a local authority or any other sum payable to such authority by way of loan or otherwise,

(*iii*) any sum due to a co-operative society,

(*iv*) any sum advanced solely for the purpose of financing of crops as provided in the repealed Act or for the purpose of seasonal finance as provided in this Act,

(*v*) any sum due under a decree or order for maintenance passed by a competent Court, and

(*vi*) any sum due to a scheduled bank.

CHAPTER II.

Procedure for adjustment of debts.

Application for adjustment of debts.

4. (*1*) Any debtor ordinarily residing in any local area for which a Board was established under section 4 of the repealed Act on or after the 1st February 1947, or his creditor may make an application before the 1st August 1947 to the Court for the adjustment of his debts.

(*2*) Every application made under sub-section (*1*) shall be in writing in the prescribed form and shall be signed, verified and presented in the prescribed manner.

(*3*) Notwithstanding anything contained in section 3 an application made under this section shall contain the amounts and particulars of all debts specified in that section due by the debtor.

Every creditor and debtor to file a true and correct statement before Court.

5. (*1*) Notwithstanding the fact that no application has been filed under section 4—

(*a*) every creditor, on being required to do so by notice in writing by any of his debtors, shall, within two months from the date of the receipt of such notice, file before the Court a true and correct statement of all his claims against such debtor, and shall at the same time send a copy thereof to such debtor, and

(*b*) every debtor, on being required to do so by notice in writing by any of his creditors, shall, within two months from the date of the receipt of such notice, file before the Court a true and correct statement—

(*i*) of all the debts owed by such debtor;

(*ii*) whether he holds any land used for agricultural purposes and whether he has been cultivating land personally;

(*iii*) of his income from agriculture and from sources other than agriculture in the year preceding the date of the notice.

The debtor shall at the same time send a copy of such statement to such creditor:

Provided that the Court may, for sufficient cause, extend, from time to time, the period within which the creditor or the debtor, as the case may be, may file such statement.

(*2*) Every debtor or creditor giving a notice under sub-section (*1*) shall at the same time send a copy thereof to the Court.

(*3*) In awarding the costs of any proceeding in respect of any application made under section 4 the Court may, on being satisfied that the statement required to be filed under sub-section (*1*) was, without sufficient cause, not filed within the time specified therein or within the period extended under the proviso to sub-section (*1*) or incorrectly filed, direct the party in default to bear the whole or any portion of the costs of such proceeding.

Application by debtor jointly and severally liable.

6. (*1*) If the payment of a debt due by a debtor is guaranteed by a surety or if a debtor is otherwise jointly and severally liable for any debt along with any other person and if the surety or such other person is not a debtor, the debtor may make an application under section 4 for relief in respect of such debt and the Court may after consideration of the facts and circumstances of the case proceed with the adjustment of debts under this Act in so far as such applicant is concerned.

(*2*) Whenever the debts due by a debtor which are guaranteed by a surety are adjusted under sub-section (*1*), the surety shall be discharged from liability in respect of the debts or portion of the debts of such debtor which are extinguished under sub-section (*1*) of section 15, sub-section (*3*) of section 17, sub-section (*5*) of section 26, section 34 or sub-section (*2*) of section 35; and the surety shall not be entitled to proceed against the debtor in respect of such debts or portion.

Assignees from non-debtor not entitled to benefit of this Act.

7. No application shall lie under section 4 for adjustment of any debt due from a debtor to whom such debt has been transferred or assigned after the 1st January 1938 by any person who is not himself a debtor.

Application for recording settlement.

8. (*1*) If any debtor and any or all of his creditors arrive at a settlement in respect of any debt due by the debtor to the creditor, the debtor or any of the creditors may, within thirty days from the date of such settlement, make an application to the Court for recording such settlement.

(*2*) Every such application shall be in the prescribed form, and shall be signed and verified in the prescribed manner.

(*3*) On receipt of such application the Court shall, after giving notice to the creditor or the debtor, as the case may be, and after making such enquiry as it thinks fit, if it is satisfied that the settlement arrived at is *bona fide* and voluntary and is not made with intent

to defeat or delay any of the creditors of the debtor, and is in the interest of the debtor, and that the debtor is a person who fulfils the conditions referred to in clauses (*a*) and (*b*) of sub-section (*1*) of section 17, record such settlement and certify the same. Every such settlement so recorded and certified shall be binding upon the parties thereto and shall not, save as otherwise hereinafter provided, be re-opened.

(*4*) After the Court has recorded and certified a settlement under sub-section (*3*), the Court shall call upon the debtor to make a declaration whether there are any other debts due by the debtor which are not included in the settlement. If the debtor makes a declaration that there are no such debts, the Court shall make an award in terms of such settlement.

(*5*) If the Court is satisfied, after recording such settlement, that there are other debts due from the debtor, which are not included in the settlement, the Court shall treat the application made under sub-section (*1*) as an application for adjustment of debts under section 4.

Settlement during pendency of proceedings before Court.

9. Notwithstanding anything contained in the preceding sections, if during the pendency of proceedings before the Court or the Court in appeal, as the case may be, a settlement is arrived at between a debtor and all his creditors and if such Court is satisfied that the settlement has been made by the debtor voluntarily and is for his benefit, such Court may make an award in terms of such settlement.

Certain settlements to be void.

10. Every settlement of a debt due from a debtor to any creditor, which is not certified by the Court under section 8, or in terms of which no award has been made under section 9, shall be void and shall not be recognised by any Court for any purpose whatsoever.

Application under section 4 or 8 to be made only in respect of debtor whose debts are not more than Rs. 15,000.

11. No application under section 4 or 8 shall be entertained by the Court on behalf of or in respect of any debtor, unless the total amount of debts due from him on the date of the application is not more than Rs. 15,000.

Withdrawal of applications.

12. An application for adjustment of debts under section 4 or an application for recording a settlement under section 8 shall not be withdrawn without the leave of the Court.

Consolidation of applications.

13. Where two or more applications for adjustment of debts under section 4 are presented by or against the same debtor, all such applications shall be consolidated. Where such separate applications are presented against joint debtors, all such applications shall be heard together.

14. On receipt of an application for adjustment of debts, the Court shall— Service of notice on debtors and creditors to submit statement of debts.

(*a*) give notice to the debtor (unless the debtor is himself an applicant) and to every creditor (other than the creditor who is himself an applicant) whose name and address are given in the application, and

(*b*) publish a general notice,

requiring the debtor and all creditors to submit a statement in the prescribed form within one month from the date of the service of the notice or the publication of the general notice, whichever is later :

Provided that if the Court is satisfied that the debtor or any creditor is for good and sufficient cause unable to comply with the notice within the time specified therein it may extend the period for the submission of the statement.

15. (*1*) Every debt due from a debtor in respect of which no application has been made under section 4 within the period specified in the said section 4 or in respect of which no application for recording a settlement is made under section 8 within the period specified in the said section 8 or in respect of which an application made to the Court is withdrawn under section 12 and no fresh application is made under section 4 and every debt due from such debtor in respect of which a statement is not submitted to the Court by the creditor in compliance with the provisions of section 14 shall be extinguished. Debts in respect of which no application for adjustment or settlement is made to be void.

(*2*) Nothing in this section shall apply to any debt due from any person who has by his declaration, act or omission intentionally caused or permitted his creditor to believe that he is not a debtor for the purposes of this Act or that no application under section 4 can be entertained in respect of any debt owed by such person to such creditor by reason of the provisions of section 11.

16. (*1*) Every debtor by or against whom an application is made under section 4 or who is a party to an application made under section 8 shall produce all books of accounts and shall give such inventories of his property and such lists of his creditors and debtors and of the debts due from and to him, submit to such examination in respect of his property or his creditors, attend at such time before the Court, and generally do all such things as may be required by the Court or as may be prescribed. Duties of debtors and creditors.

(*2*) It shall be the duty of every creditor to produce such books of accounts, to submit to such examination and to supply such information in respect of the debt due to him by the debtor and the securities held by him, as may be required by the Court or as may be prescribed.

Preliminary issues.

17. (*1*) On the date fixed for the hearing of an application made under section 4, the Court shall decide the following points as preliminary issues :—

(*a*) whether the person for the adjustment of whose debts the application has been made is a debtor ;

(*b*) whether the total amount of debts due from such person on the date of the application exceeds Rs. 15,000.

(*2*) If the Court finds that such person is not a debtor or that the total amount of debts due from such person on the date of the application is more than Rs. 15,000, the Court shall dismiss the application forthwith :

Provided that before the application is so dismissed the creditors or any of them may remit any specific portion of their claim so as to reduce the total amount of the debts of all the creditors due from such person on the date of the application to a sum not exceeding Rs. 15,000. In such case the Court shall not dismiss the application but shall proceed further with the same.

(*3*) The portion of the debts in respect of which the claim is remitted under sub-section (*2*) shall be extinguished.

Court-fee to be refunded to creditor.

18. If an application made by a creditor under section 4 is dismissed under section 17 on the ground that the total amount of the debts due from a debtor on the date of the application is more than Rs. 15,000, the Court shall direct the amount of the court-fee paid by the creditor making the application to be refunded to the creditor.

Transfer of pending suits, appeals, applications and proceedings to the Court.

19. (*1*) All suits, appeals, applications for execution and proceedings other than revisional in respect of any debt pending in any civil or revenue court shall, if they involve the questions whether the person from whom such debt is due is a debtor and whether the total amount of debts due from him on the date of the application exceeds Rs. 15,000, be transferred to the Court.

(*2*) When an application for adjustment of debts made to a Court under section 4 or a statement submitted to a Court under section 14 includes a debt in respect of which a suit, appeal, application for execution or proceeding other than revisional is pending before a civil or revenue court, the Court shall give notice thereof to such other court. On receipt of such notice, such other court shall transfer the suit, appeal, application or proceeding, as the case may be, to the Court.

(*3*) When any suit, appeal, application or proceeding is transferred to the Court under sub-section (*1*) or sub-section (*2*), the Court shall proceed as if an application under section 4 had been made to it.

(4) If the Court, to which any suit, appeal, application or proceeding is transferred under sub-section (1) or sub-section (2), decides the preliminary issue mentioned in clause (a) of sub-section (1) of section 17 in the negative or that mentioned in clause (b) of the said sub-section (1) in the affirmative, it shall retransfer the suit, appeal, application or proceeding to the court from which it had been transferred to itself after the disposal and subject to the result of the appeal where an appeal is filed, and after the expiry of the period prescribed for an appeal where no appeal is filed.

(5) When any suit, appeal, application or proceeding is retransferred to the court under sub-section (4), the said court shall proceed with the same.

Taking of accounts.

20. If the Court finds the person making an application under section 4 or the person against whom an application is made under the said section 4 to be a person—

(a) who is a debtor, and

(b) the total amount of debts due from whom on the date of the application is not more than Rs. 15,000,

the Court shall proceed to take accounts in the manner hereinafter provided.

Examination of creditor and debtor.

21. In an application for the adjustment of debts if the amount of the creditor's claim is disputed, the Court shall, when taking accounts, examine both the creditor and the debtor as witnesses, unless for reasons to be recorded the Court deems it unnecessary so to do.

Mode of taking accounts.

22. Notwithstanding any agreement between the parties or the persons (if any) through whom they claim, as to allowing compound interest or setting off the profits of mortgaged property without an account in lieu of interest, or otherwise determining the manner of taking the account, and notwithstanding any statement or settlement of account, or any contract purporting to close previous dealings and create a new obligation, the Court shall inquire into the history and merits of the case and take account between the parties from the commencement of the transactions subsisting between the parties and the persons (if any) through whom they claim, out of which the claim has arisen and determine the amount due to each of the creditors at the date of the application made under section 4, according to the following rules, namely :—

(1) (a) Separate accounts of principal and interest shall be taken ;

(*b*) In the account of principal there shall be debited to the debtor only such money as may from time to time have been actually received by him or on his account from the creditor, and the price of goods, if any, sold to him by the creditor ;

(*c*) In the accounts of principal and interest there shall also be debited the amounts, if any, respectively due for principal (including costs) and interest under any decree or order passed by a competent court in respect of any debt :

Provided that if such decree or order does not specify the amount of principal and interest separately or does not contain any material for determining the same, two-thirds and one-third of the amount awarded by such decree or order shall, for purposes of this clause, be deemed to be the amount awarded on account of principal (including costs) and interest, respectively.

(*2*) In the case of transactions which commenced before the 1st January 1931 the Court shall take the account up to the date of the institution of the application and in the account of interest there shall be debited to the debtor, simple interest on the balance of principal for the time being outstanding at the rate agreed upon between the parties or at the rate allowed under any decree passed between the parties, or at a rate not exceeding 12 per cent. per annum, whichever is the lowest. The amount found due in respect of principal as well as in respect of interest shall, each separately, be reduced by 40 per cent. notwithstanding that a decree or order of a civil court was passed in respect of any such amount or portion thereof. The amounts so reduced shall be taken to represent the amounts due in respect of principal and interest on the date of the institution of the application.

(*3*) In the case of transactions which commenced on or after the 1st January 1931 but before the 1st January 1940 in the account of interest there shall be debited to the debtor, simple interest on the balance of principal for the time being outstanding at the rate agreed upon between the parties, or at the rate allowed under any decree passed between the parties, or at a rate not exceeding 9 per cent. per annum, whichever is the lowest. The amount found due on the date of the institution of the application in respect of principal as well as interest shall each separately be reduced by 30 per cent. notwithstanding that a decree or order of a civil court was passed in respect of any such amount or portion thereof. The amounts so reduced shall be taken to represent the amounts due in respect of principal and interest on the date of the institution of the application.

(*4*) In the case of transactions which commenced on or after the 1st January 1940, in the account of interest there shall be debited to the debtor simple interest on the balance of principal for the time being outstanding at the rate agreed upon between the parties, or at the rate allowed under any decree passed between the parties, or at a rate not exceeding 6 per cent. per annum, whichever is the lowest.

(*5*) All money paid by or on account of the debtor to the creditor or on his account and all profits, service or other advantages of every description received by the creditor in the course of the transactions (estimated, if necessary, at such money-value as the Court in its discretion may determine) shall be credited first in the account of interest, and when any payment is more than sufficient to discharge the balance of interest due at the rate specified in rule (2), (3) or (4), as the case may be, the residue of such payment shall be credited to the debtor in the account of principal.

(*6*) The accounts of principal and interest shall be made up to the date of the institution of the application, and the aggregate of the balance, if any, appearing due on both such accounts against the debtor on that date shall be deemed to be the amount due at that date, except when the balance appearing due on the interest-account exceeds that appearing due on the principal-account, in which case, double the latter balance shall be deemed to be the amount then due.

Provided that where transactions between the parties have commenced more than 30 years before the 30th January 1940 any settlement of accounts which has been last arrived at between the parties before the said period of 30 years and which is in writing and bears the signature of the debtor or the person through whom the liability is derived shall be accepted as binding between the parties and no inquiry into the history and merits of the case shall be made prior to the date of such settlement.

In certain cases rent may be charged in lieu of profits.

23. Where any mortgaged property is in the possession of the mortgagee or his tenants other than the mortgagor and the Court is unable to determine what profits have actually been received, it may fix a fair rent for such property and charge to the mortgagee such rent as profits for the purpose of section 22 :

Provided that, if it be proved that in any year there was any suspension or remission of rent or land revenue of such land under section 84A of the Bombay Land Revenue Code, 1879, an abatement of the whole or part of such amount may be allowed for the year.

Bom. V of 1879.

Power of Court to declare transfer purporting to be sale to be in nature of mortgage.

24. (*1*) Notwithstanding anything to the contrary contained in any law, custom, or contract, whenever it is alleged during the course of the hearing of an application made under section 4 that any transfer of land by a person whose debts are being adjusted under this Act or any other person through whom he inherited it was a transfer in the nature of a mortgage, the Court shall declare the transfer to be a mortgage, if the Court is satisfied that the circumstances connected with that transfer showed it to be in the nature of a mortgage.

(*2*) Any agricultural labourer may make an application before the 1st August 1947 to the Court that any transfer of land by him or any other person through whom he inherited it was a transfer in the nature of a mortgage. On hearing the application, the Court shall, notwithstanding anything to the contrary contained in any law, custom, or contract, declare the transfer to be a mortgage, if it is satisfied that the circumstances connected with the transfer showed it to be in the nature of a mortgage. When the Court makes any such declaration, the applicant shall, notwithstanding anything contained in the definition of "debtor" in sub-section (*5*) of section 2, be deemed to be a debtor for the purposes of this Act and the Court shall proceed as if an application under section 4 had been made to it.

Provisions of section 24 not to apply to certain transfers and transferees.

25. Nothing in section 24 shall apply to—

(*i*) any transfer which has been adjudged to be a transfer other than a mortgage by a decree of a court of competent jurisdiction or by a Board established under section 4 of the repealed Act; and

(*ii*) any *bona fide* transferee for value without notice of the real nature of such transfer or his representative where such transferee or representative holds under a registered deed executed on or before the 15th day of February 1939.

Notice to Collector, co-operative societies, Registrar, local authorities and others.

26. (*1*) On receipt of an application for adjustment of debts, the Court shall give notice to the Collector requiring him to state to the Court within such time as may be fixed by it the amount of the debt due by the debtor to Government.

(*2*) The Court shall also give similar notice to any local authority, co-operative society or scheduled bank to which any debt may be due by the debtor and also to any person who is entitled to maintenance from the debtor, under a decree or order passed by a competent Court. In the case of any debt due to a co-operative society, the Court shall also give notice to the Registrar of Co-operative Societies or to such officer as the Registrar may nominate in this behalf.

(*3*) On receipt of such notice the Collector, the local authority, the co-operative society or the scheduled bank, or the person entitled to maintenance, as the case may be, shall, within such time as may be fixed by the Court, from time to time submit a statement to the Court showing the total amount of the debt due by the debtor as also any recurring liability against such debtor in respect of the liability for maintenance under the decree or order.

(*4*) The Collector, the co-operative society and the scheduled bank shall also furnish a statement to the Court showing the amount of remission which the Provincial Government, the co-operative society or the scheduled bank, as the case may be, is willing to give in respect of the debt.

(*5*) The portion of any debt remitted under sub-section (*4*), and unless the Court otherwise directs any debt or portion thereof in respect of which no statement is submitted under sub-section (*3*), shall be extinguished.

Court's duty to determine particulars, value, etc., of property.

27. After taking accounts under section 22 the Court shall in the manner hereinafter provided determine—

(*1*) the particulars of the property belonging to the debtor,

(*2*) the value of the said property,

(*3*) the particulars of any incumbrances on the said property, and

(*4*) the paying capacity of the debtor.

Fraudulent alienations or incumbrances void.

28. (*1*) If in the course of the hearing of an application made under section 4, the Court finds that the debtor has made an alienation of property or created any incumbrance thereon with intent to defeat or delay any of his creditors, the Court shall, by notice, summon the debtor and the person in whose favour the alienation or incumbrance is made or created to appear before it on a day to be specified in the notice.

(*2*) On the day specified in the notice or such other day to which the hearing may be adjourned the Court shall hear the parties and if it is satisfied that the alienation was made or the incumbrance was created with intent to defeat or delay any of the creditors of the debtor, the Court shall declare the alienation or incumbrance to be void.

(3) Nothing in this section shall impair the rights of an alienee or the holder of an incumbrance in good faith and for valuable consideration.

Value of property of debtor to be determined by Court in prescribed manner.

29. (1) Subject to the provisions of sub-sections (2), (3) and (4), the value of the property and other assets of a debtor for the purposes of ascertaining the paying capacity of the debtor under section 27 shall be determined by the Court in the prescribed manner.

(2) The property or assets which are exempt from attachment in execution of a decree of a civil court under the Code of Civil Procedure, 1908, shall not be taken into account. V of 1908.

(3) The amount of the debts mentioned in section 3 shall be deducted.

(4) The market value of the lands, which under any law for the time being in force, are not transferable or alienable except with the previous sanction of the Collector or the Provincial Government, shall be calculated in such manner as may be prescribed.

Paying capacity.

30. The paying capacity of the debtor shall, for the purposes of this Act, be deemed to be sixty per cent. of the value of all the property of the debtor:

Provided that when any portion of such property yields income but the market value of such portion cannot be determined, the value of such portion shall be the amount of the income capitalized at six per cent. per annum.

Debts payable by debtors to be scaled down.

31. (1) Notwithstanding any law, custom, contract, award or decree of a court to the contrary the amounts found due under section 22 from a debtor shall be further scaled down in the manner hereinafter provided.

(2) If all the debts found due by a debtor after taking accounts under section 22, are unsecured, such debts shall be further scaled down *pro rata* to the paying capacity of the debtor.

(3) If all the debts found due by a debtor after taking accounts under section 22, are secured debts, and the total amount of such debts is more than sixty per cent. of the value of the property belonging to the debtor, such debts shall be further scaled down *pro rata* to the paying capacity of the debtor.

(*d*) If the debts found due by a debtor after taking accounts under section 22 are both secured and unsecured, and if the total amount of the secured debts is more than sixty per cent. of the value of the property on which such debts are secured, the secured debts shall be further scaled down *pro rata* to sixty per cent. of the value of the property on which such debts are secured and the unsecured debts shall be further scaled down *pro rata* to sixty per cent. of the value of the other property belonging to the debtor over which no debts are secured.

Award.

32. (*1*) After determining the amount of debts scaled down in the manner provided in section 31 the Court shall, save as otherwise provided in section 33, make an award.

(*2*) The award shall be in the prescribed form and shall be drawn up subject to the following provisions :—

(*i*) the amount of the secured debts scaled down shall be charged on the properties on which they may have been secured ;

(*ii*) subject to clause (*i*) the amount of unsecured debts shall be charged on all the properties of the debtor ;

(*iii*) in fixing the priority in which debts shall be paid the following order shall be followed :—

(*a*) debts due to Government, which are charged on the immoveable property belonging to the debtor or which are recoverable as the current year's land revenue,

(*b*) debts due to local authorities, which are charged on the immoveable property belonging to the debtor or which are recoverable as the current year's dues,

(*c*) loans given by resource societies or by persons authorised to advance loans under section 78 of the repealed Act or section 54 of this Act for the financing of crops under the repealed Act or for seasonal finance under this Act after the 30th January 1940 and other loans given for financing crops after the 1st January 1939 and before the 30th January 1940,

(*d*) secured debts in order of priority,

(*e*) debts due to Government, local authorities and other bodies including co-operative societies, and recoverable as arrears of land revenue,

(*f*) other debts due to co-operative societies,

(*g*) unsecured debts :

Provided that in the case of unsecured debts they shall be paid *pro rata* ;

(*iv*) the total annual instalments shall not exceed twelve :

Provided that in fixing the amount of instalments in which the debts shall be paid the Court shall ascertain the net annual income of the debtor and the annual instalments payable by the debtor shall not exceed his net annual income.

Explanation.—For the purposes of this clause, the net annual income of the debtor shall mean the balance of his annual income after deducting (*i*) such sum as may be considered necessary for the payment of the liability, if any, imposed on the debtor under a decree or order for maintenance passed by a competent Court, (*ii*) such sum as may be considered necessary for the maintenance of the debtor and his dependants, and (*iii*) the sum required by the debtor to pay the assessment and taxes in respect of the current year to Government and to local authorities and to pay off loans borrowed for the purpose of the financing of crops under the repealed Act or seasonal finance under this Act ;

(*v*) the Court may pass an order for the delivery of possession of any property notwithstanding any law or contract to the contrary ;

(*vi*) the rate of interest shall not exceed 6 per cent. per annum or such less rate as may be notified in this behalf by the Provincial Government or the rate agreed upon between the parties when the debt was originally incurred or the rate allowed by the decree in respect of such debt, whichever is the lowest.

Court to prepare scheme for adjustment of debts through Provincial Land Mortgage Bank.

33. (*1*) Where the amount of debts of the debtor as scaled down under section 31 by it exceeds half the value of the debtor's immoveable property as determined by it, the Court shall intimate to the creditors the amount of the said debts of the debtor and the said value of the debtor's immoveable property and call upon them to state in writing within a specified period not exceeding one month whether they agree to the further scaling down of the said debts so as to reduce them to a sum not exceeding half the said value of the immoveable property of the debtor. If all the creditors agree to the further scaling down of the debts, the Court shall make an order directing the debtor to pay the amount of such debts so agreed upon within a period of one month from the date of the order.

(2) Unless the debtor pays the amount of such debts within a period of one month from the date of the order or such extended period not exceeding one month as the Court may allow and produces the creditors' receipt therefor, the Court shall make an award in the prescribed form directing that the Primary Land Mortgage Bank situated in the local area or if there is no such Primary Land Mortgage Bank in that local area, the Bombay Provincial Co-operative Land Mortgage Bank registered under the Bombay Co-operative Societies Act, 1925, shall pay the creditors in cash the debt as finally scaled down or, if the creditors so desire, in bonds issued by the Bombay Provincial Co-operative Land Mortgage Bank, such bonds being guaranteed by the Provincial Government, for such amount in full satisfaction of all the debts due to them from the debtor. The Court shall further direct that such amount shall be charged on all the immoveable property of the debtor.

Bom. VII of 1925.

(3) The Bank shall be entitled to recover the amount due to it from the debtor in such annual instalments and at such rate of interest not exceeding six per cent. per annum as the Provincial Government may notify in this behalf in the *Official Gazette*, from time to time.

(4) All sums due under an award made in favour of the bank under this section shall be recoverable as arrears of land revenue.

No recovery of amount in excess of debts scaled down.

34. The amount of debts scaled down under section 31 or further scaled down under section 33 shall for the purposes of this Act be the amount due by the debtor in respect of the said debts and the portion of the debts in excess of this amount shall be extinguished.

Debts not to be scaled down in case of collusion.

35. If the Court making an award under section 32 is at any stage of the proceeding satisfied—

(1) that the debtor had in collusion with any creditor furnished in such proceeding incorrect information in respect of the debt due by him to such creditor with a view to defeat the lawful claims of any other creditor, the Court may refuse to scale down any of the debts of such debtor in the manner provided in section 31 and may make an award for the full amount of the debts due from such debtor;

(2) that any claim by a creditor in such proceeding had been put forward in collusion between the debtor and such creditor with a view to defeat the lawful claims of any other creditor, the Court shall order that the debt due by the debtor to such creditor shall be extinguished and such debt shall not be recoverable.

Ex parte proceedings if any party does not appear.

36. (*1*) Notwithstanding that the person for the adjustment of whose debts an application has been made under section 4 or any of his creditors does not appear on the date fixed for the hearing of the application or on any date to which it may be adjourned, the Court shall proceed *ex parte* to hear the application, decide the preliminary issues and, if necessary, make the award, on the evidence available.

(*2*) When an application made under section 4 is heard and disposed of *ex parte* under sub-section (*1*), the decision on the preliminary issues or the award shall not, except for sufficient reasons, be reopened merely on the ground that any of the parties thereto did not appear at the hearing.

Re-opening of award and re-adjustment of debts.

37. If, after an award is made under section 32, the Court finds on an application made to it by any party or otherwise, that the debtor has other property which was not disclosed to the Court when the award was made, or that any property included in the award did not belong to the debtor, the Court may, notwithstanding anything contained in this Act, reopen the award and readjust the debts in accordance with the provisions of this Act :

Provided that where the Court is satisfied that the non-disclosure of such property was in consequence of any fraud on the part of the debtor, the Court in revising the award shall not give the debtor the benefit of section 31.

Award to be registered : how executed.

38. (*1*) Every award made under this Act shall, on payment of the court-fee payable under section 44, be registered under the Indian Registration Act, 1908, after the expiry of the period provided for an appeal, if an appeal is allowed but no appeal is filed and after the disposal of the appeal, if an appeal is filed.

XVI of 1908.

(*2*) The court-fee on the award shall be paid by the party ordered by the Court to bear the costs :

Provided that any creditor who is not ordered to bear the costs may pay such court-fee. Such creditor shall be entitled to recover the amount of court-fee paid by him from the debtor with the first instalment payable to him under the award :

Provided further that no court-fee shall be payable by a co-operative society.

(*3*) The award so registered shall be executed as follows :—

(*i*) If the debtor makes default in the payment of any instalment due under the award to any creditor such creditor may apply in the prescribed form to the Court for execution of the award.

(*ii*) If the Court on receipt of such application is satisfied that the debtor has made default in the payment of the instalment the Court shall transfer the award for execution to the Collector and thereupon the Collector shall recover the amount of the instalment from the debtor as arrears of land revenue :

Provided that nothing in this sub-section shall affect the right of Government, a local authority or a co-operative society to have recourse to any mode of recovery allowable by any law for the time being in force.

Postponement of payment of instalment in case of remissions, etc.

39. (*1*) Whenever from any cause the payment of one-half or more of the land revenue payable to the Provincial Government is suspended or remitted the payment of the whole of the instalment due for that year and the full amount of the instalment due for each subsequent year under an award made under section 8, 9, 32 or 33 shall be postponed for one year.

(*2*) Whenever from any cause the payment of any portion less than one-half of the land revenue payable to the Provincial Government is suspended or remitted one-half of the amount of the instalment for that year and the full amount of the instalment due for each subsequent year under an award made under section 8, 9, 32 or 33 shall be postponed for one year.

No alienation by debtor before discharge of debts valid.

40. Notwithstanding any law or contract but subject to the provisions of section 41, no alienation of any property belonging to a debtor who is a party to any proceedings or award under this Act, made by him before all his debts are discharged shall be valid, except with the previous sanction of the Provincial Government.

Court may order sale of debtor's property in liquidation of his debt.

41. If the Court or the Court hearing an appeal against the award is at any time satisfied that it is in the interest of a debtor that any part of his property should be sold in liquidation of his debt or part thereof, such Court may permit the debtor to sell such part of the property for such purpose within a specified period. If the debtor fails so to sell it, such Court may order an officer of the Court to sell the same. The property ordered to be sold under this section shall be sold by such officer in the manner prescribed :

Provided that the part of the property ordered to be sold under this section shall not exceed the part liable to be sold under sub-section (*2*) of section 47.

Pleaders, etc., excluded from appearance.

42. Except in proceedings under sections 24 and 28 no pleader shall be entitled to appear on behalf of any party in any proceeding before the Court or the Court in appeal under this Act :

Provided that if the Court after examining the parties to any proceeding before it or the Court in appeal is of opinion that any of the parties is not sufficiently competent to represent his case and that in the interest of justice it is necessary to allow such party the assistance of any pleader, it may allow the parties to be represented at their own cost by a pleader :

Provided further that pleader's fees shall not be allowed as part of the costs for the appearance of a pleader in any proceedings under this Act.

Appeals.

43. Notwithstanding anything contained in any other law and save as otherwise provided in section 51,

(*1*) an appeal shall lie—

(*i*) from every order passed under sub-section (*3*) of section 8 ;

(*ii*) from every order passed under section 17 ;

(*iii*) from every order passed under section 24 ;

(*iv*) from every order passed under section 28 ;

(*v*) from every order passed under sub-section (*2*) of section 36 ;

(*vi*) from every award made under this Act other than an award made in terms of a settlement under sub-section (*4*) of section 8 or under section 9 or an award made under section 33 before the making of which the creditors' agreement has been obtained under sub-section (*1*) thereof or an award before the making of which neither the debtor nor any of the creditors produced evidence to enable the Court to determine the amount of debt due from the debtor ;

(*2*) an appeal from the Court shall lie to the Court of the District Judge ;

(*3*) no second appeal shall lie against any decision, order or award of the Court under this Act.

Court-fees.

44. (*1*) Notwithstanding anything contained in the Court-fees Act, 1870, court-fees payable in respect of proceedings under this Act shall be at the following rates :— VII of 1870.

(*i*) on an application under sub-section (*1*) of section 4 or of section 8 or on an award under sub-section (*4*) of section 8 or section 9—Re. 1 ;

(*ii*) on an award other than an award specified in clause (*i*)—Re. 1 for every hundred rupees, or part thereof, of the amount of the award, subject to a maximum of Rs. 50 ;

(*iii*) on an appeal against a decision of the Court under sub-section (*3*) of section 8 or sub-section (*2*) of section 17—Rs. 2 ;

(*iv*) on an appeal other than an appeal specified in clause (*iii*)—Re. 1 for every hundred rupees, or part thereof, of the amount of the award, subject to a maximum of Rs. 50.

(*2*) Notwithstanding anything contained in any law, the court-fees payable in respect of proceedings under this Act shall be a first charge on the property of the party ordered to pay the costs and shall be recoverable in such manner as may be prescribed.

Notice how served.

45. Any notice required to be served under this Act shall be served in the manner provided in the Code of Civil Procedure, 1908 ; and when rules are made in that behalf in such manner as may be prescribed. V of 1908.

V of 1908.

46. Save as otherwise expressly provided in this Act, the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings under this Chapter. Provisions of Civil Procedure Code to apply to proceedings.

CHAPTER III.

Insolvency Proceedings.

47. (*1*) If at any stage of the proceedings under Chapter II the Court finds that the income of the debtor and his moveable property are not sufficient to allow his debts to be liquidated by annual instalments not exceeding twelve in number, the Court shall make an order adjudicating the debtor an insolvent. Court to declare debtor insolvent in certain circumstances.

(*2*) After the debtor has been adjudicated an insolvent, the Court shall direct that such portion of the property of the debtor, liable to attachment and sale under section 60 of the Code of Civil Procedure, 1908, excluding such portion thereof as the Provincial Government shall from time to time notify in the *Official Gazette* as the minimum necessary for the maintenance of the debtor and his dependants, as may be required to liquidate all the debts of the debtor, shall immediately be sold free of all incumbrances in liquidation of all debts outstanding against such debtor.

V of 1908.

V of 1920.

48. The order of adjudication made under section 47 shall have the force of an order made by a competent court in the exercise of its powers under section 27 of the Provincial Insolvency Act, 1920. Procedure in insolvency proceedings.

49. The proceeds realised by the sale of the property of the insolvent under section 47 shall be distributed in the order of priority specified in clause (*iii*) of sub-section (*2*) of section 32. Distribution of assets of insolvent.

50. No application or proceeding in regard to the insolvency of a debtor shall lie in or shall be dealt with by any other Court. Bar to application in insolvency in other courts.

51. No appeal shall lie from any order passed under this Chapter except on the ground that the insolvent has failed to disclose all the material facts relating to his assets and liabilities. Appeals barred.

CHAPTER IV.

Miscellaneous.

52. In computing the period of limitation for the institution of any suit or proceeding in respect of any debt due from any person who is held not to be a debtor by the Court or the Court in appeal the period during which the proceedings were pending before the court in respect of such debt shall be excluded. Period of proceeding before Courts under this Act to be excluded.

Alienation of standing crops, etc., before repayment of loan prohibited.

53. (*1*) No person, who is a party to any proceedings or award under this Act and who is indebted to a resource society or any person authorised to advance loans under section 78 of the repealed Act or section 54 of this Act on account of any loan advanced to him for the financing of crops under the repealed Act or seasonal finance under this Act, shall hypothecate or sell the standing crops or the produce of his land without the previous permission of the society or of the person, as the case may be, until such loan has been repaid in full.

(*2*) Any person who hypothecates or sells the standing crop or the produce of his land in contravention of sub-section (*1*), shall, on conviction, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 500.

(*3*) No criminal Court shall take cognizance of any offence under this section except on the complaint in writing of the Court before which the proceedings were held or which made the award.

Power of Provincial Government to authorise any person to advance loans to debtors.

54. (*1*) The Provincial Government may by notification in the *Official Gazette* authorise in any local area any person to advance loans to debtors who are parties to any proceedings under this Act or in respect of whose debts an adjustment has been made under this Act.

(*2*) Such authority shall be granted on such conditions as may be prescribed.

Rules.

55. (*1*) The Provincial Government may by notification in the *Official Gazette* and subject to the condition of previous publication from time to time, make rules for carrying into effect the purposes of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing provision, such rules may be made for all or any of the following purposes, namely :—

(*a*) the purposes for which loans may be advanced under clause (13) of section 2 ;

(*b*) the form of application under sub-section (*2*) of section 4 and the manner of signing, verification and presentation thereof ;

(*c*) the form of application and the manner of signing and verification thereof under sub-section (*2*) and the manner of giving notice under sub-section (*3*) of section 8 ;

(*d*) the manner of giving notice and publication of general notice and the form of statement to be submitted under section 14 ;

(*e*) the inventories of property, lists of creditors and of debtors and of debts due to and from a debtor, the examination in respect of property or creditors, the time at which the debtors shall attend before the Court and do other things in relation to property under sub-section (*1*) of section 16, and the production of books of account, the

examination to be submitted to, and the information to be supplied by a creditor in respect of the debt due to him by the debtor under sub-section (*2*) of section 16 ;

(*f*) the manner of determining the value of property and other assets under sub-section (*1*), and the manner of calculating the market value of the lands under sub-section (*4*), of section 29 ;

(*g*) the form of award under sub-section (*2*) of section 32 and sub-section (*2*) of section 33 ;

(*h*) the form of application under clause (*i*) of sub-section (*3*) of section 38 ;

(*i*) the manner in which property may be sold under section 41 ;

(*j*) the manner of recovery of Court-fees under sub-section (*2*) of section 44 ;

(*k*) the manner of service of notice under section 45 ;

(*l*) the conditions on which authority to grant loans shall be granted under sub-section (*2*) of section 54.

Repeal of Act XVII of 1879 and Bom. XXVIII of 1939.

56. (*1*) On the expiry of a period of three years from the date of the coming into operation of this Act (hereinafter in this sub-section referred to as the said date) the Dekkhan Agriculturists' Relief Act, 1879, shall cease to have force :

XVII of 1879.

Provided that nothing in this sub-section shall be deemed to affect, in regard to persons who are debtors and in respect of whose debts an application under section 4 of this Act can be made, anything done in the course of any proceeding pending in any Court on the said date and any such proceeding may be continued, in so far as the continuance is not inconsistent with the provisions of this Act :

Provided further that nothing in this sub-section shall in any way affect the transfer under section 19 of this Act of any suit or proceeding to which such debtor was a party.

Bom. XXVIII of 1939.

(*2*) The Bombay Agricultural Debtors Relief Act, 1939, is repealed.

All Boards established under section 4 of the repealed Act shall be dissolved :

Provided that all proceedings pending before any such Board shall be continued before the Court as if an application under section 4 of this Act had been made to the Court.

Provided further that all appeals pending before any Court under the repealed Act shall be continued and disposed of as if they were appeals under this Act :

Provided also that all appeals against decisions, orders or awards of any Board established under the repealed Act which but for this Act would have lain shall when presented be deemed to be appeals from the decisions, orders or awards passed by a Court under this Act and shall be disposed of accordingly.

Government of Bombay

LEGAL DEPARTMENT

[L. A. BILL No. XIV OF 1947]

(As read for the third time and passed by the Legislative Assembly on the 9th April 1947)

(As read for the third time and passed by the Legislative Council on the 11th April 1947)

A Bill to consolidate and amend the law for the Relief of Agricultural Debtors in the Province of Bombay

---

[Mr. VAIKUNTH L. MEHTA, M.L.A.]

MO-III Bk Hb 31—4

BOMBAY: PRINTED AT THE GOVERNMENT CENTRAL PRESS.